

**UNITED STATES BANKRUPTCY COURT FOR THE NORTHERN DISTRICT OF
TEXAS, DALLAS DIVISION**

In Re: Highland Capital Management, L.P. § Case No. **19-34054-SGJ-11**

Hunter Mountain Investment Trust

Appellant §

vs. §

Highland Capital Management, L.P, et al § **3:23-CV-2071-E**

Appellee §

**[3904] Order Pursuant to Plan "Gatekeeper Provision" and Pre-Confirmation "Gatekeeper Orders"
Denying Hunter Mountain Investment Trust's Emergency Motion for Leave to File Verified Adversary
Proceeding. Entered on 8/25/2023.**

Volume 29

APPELLANT RECORD

UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:

HIGHLAND CAPITAL
MANAGEMENT, L.P.

Reorganized Debtor.

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Chapter 11

Case No. 19-34054-sgj11

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**APPELLANT HUNTER MOUNTAIN INVESTMENT TRUST'S
SECOND SUPPLEMENTAL STATEMENT OF THE ISSUES AND
DESIGNATION OF ITEMS FOR INCLUSION IN THE APPELLATE RECORD**

COMES NOW Appellant/Movant Hunter Mountain Investment Trust, both in its individual capacity and derivatively on behalf of the Reorganized Debtor, Highland Capital Management, L.P., and the Highland Claimant Trust,¹ (collectively, "Appellant" or "HMIT"), and files this Second Supplemental² Statement of the Issues and Designation of Items for Inclusion in the Appellate Record pursuant to Federal Rule of Bankruptcy Procedure 8009(a)(1):

**I.
STATEMENT OF THE ISSUES**

- A. Did the bankruptcy court err in determining that the "colorable" claim analysis allowed the court to consider evidence and other non-pleading materials including, but not limited to, the court's reasoning that:
1. the colorability analysis is stricter than a non-evidentiary, Rule 12(b)(6)-type analysis;
 2. the colorability analysis is "akin to the standards applied under the ... *Barton* doctrine";
 3. the colorability analysis requires a "hybrid" of the *Barton* doctrine and "what courts have applied when considering motions to file suit when a vexatious litigant bar order is in place"; and/or,

¹ And in all capacities and alternative derivative capacities asserted in HMIT's Emergency Motion for Leave to File Verified Adversary Proceeding [Dkt. Nos. 3699, 3815, and 3816] ("Emergency Motion"), the supplement to the Emergency Motion [Dkt. No. 3760], and the draft Complaint attached to the same [Dkt. No. 3760-1].

² Appellant files this Second Supplement pursuant to the Clerk's request at Docket #3949 and correspondence on 10/23/2023.

4. “[t]here may be mixed questions of fact and law implicated by the Motion for Leave”?

[See Dkt. Nos. 3781, 3790, 3903-04].

- B. Did the bankruptcy court err in determining that Appellant lacked constitutional or prudential standing to bring its claims in its individual and derivative capacities?

[See Dkt. Nos. 3903-04].

- C. Did the bankruptcy court err in alternatively determining that, even under a non-evidentiary, Rule 12(b)(6)-type analysis, Appellant did not assert colorable claims including, but not limited to, determining that:

1. Appellant’s allegations are conclusory, speculative, or constitute “legal conclusions”;
2. Appellant’s claims or allegations are not “plausible”;
3. Appellant’s allegations pertaining to a *quid pro quo* are “pure speculation”;
4. Proposed Defendant James P. Seery (“Seery”) owed no duty to Appellant in any capacity as a matter of law;
5. Appellant failed “to allege facts in the Proposed Complaint that would support a reasonable inference that Seery breached his fiduciary duty to HMIT or the estate as a result of bad faith, self-interest, or other intentional misconduct rising to the level of a breach of the duty of loyalty”;
6. Appellant’s allegations pertaining to its aiding and abetting and conspiracy claims are speculative and not plausible;
7. The remedies of equitable disallowance and equitable subordination are not remedies “available” to Appellant as a matter of law;
8. Appellant’s unjust enrichment claim is invalid as a matter of law because “Seery’s compensation is governed by express agreements”;
9. Appellant is not entitled to declaratory relief because it has no colorable claims; and/or
10. Appellant cannot recover punitive damages for its breach of fiduciary duty claim?

[See Dkt. Nos. 3903-04].

- D. Alternatively, even if the bankruptcy court correctly determined that its “hybrid” *Barton* analysis controls, did the court violate Appellant’s due process rights by denying Appellant its requested discovery?

[See Dkt. Nos. 3800, 3853, 3903-04, June 8, 2023 Hearing].

- E. Alternatively, did the bankruptcy court err by denying Appellant’s requested discovery including, but not limited to:

1. ordering that Appellant could not request or obtain any discovery other than a deposition of Seery and James D. Dondero; and/or
2. determining that state court “Rule 202” proceedings supported the denial of discovery?

[See Dkt. Nos. 3800 & June 8, 2023 Hearing; *see also* Dkt. Nos. 3903-04].

- F. Alternatively, did the bankruptcy court err by denying Appellant’s alternative request for a continuance to obtain the requested discovery?

- G. Alternatively, did the bankruptcy court err by excluding Appellant’s evidence, or admitting the same for only limited purposes, offered at the June 8, 2023 Hearing?

- H. Alternatively, did the bankruptcy court err by overruling Appellant’s objections to Appellees’ evidence offered at the June 8, 2023 Hearing?

- I. Alternatively, did the bankruptcy court err by excluding Appellant’s experts’ testimony?

[See Dkt. No. 3853; *see also* Dkt. Nos. 3903-04].

- J. Alternatively, did the bankruptcy court err by striking Appellant’s proffer of its excluded experts’ testimony from the record?

[See Dkt. No. 3869].

- K. Alternatively, if the bankruptcy court correctly determined that its “hybrid” *Barton* analysis controls, did the bankruptcy court err in determining that Appellant had not asserted colorable claims under that “hybrid” analysis including, but not limited to, its findings that:

1. there is no evidence to support that Seery shared material non-public information with the Claims Purchasers;
2. there is no evidence to support the alleged quid pro quo;
3. the material shared was *public* information; and/or
4. the Claims Purchasers had sufficient and lawful reasons to pay the amounts paid

for the purchased claims.

[See Dkt. Nos. 3903-04].

- L. Did the bankruptcy court err in finding that Appellant is controlled by Dondero, and, as such, Appellant “cannot show that it is pursuing the Proposed Claims for a proper purpose”?
- M. Alternatively, does sufficient evidence support the bankruptcy court’s evidentiary findings made pursuant to its “hybrid” *Barton* analysis?
- N. Did the bankruptcy court err in denying an expedited hearing on Appellant’s Motion for Leave? [See Dkt. 3713].
- O. Does the bankruptcy court’s use of a new “colorability” standard to determine if claims by non-debtors against other non-debtors may proceed violate *Stern v. Marshall* and its progeny?
- P. Did the bankruptcy court err in denying Appellant’s Motion to Alter or Amend Order, to Amend or Make Additional Findings, for Relief from Order, or Alternatively, for New Trial under Federal Rules of Bankruptcy Procedure 7052, 9023, and 9024 including, but not limited to by:
 - 1. declining to consider disclosures that demonstrated that Appellant is “in the money”—an issue pertinent to the court’s erroneous standing decisions; and
 - 2. concluding that the disclosures failed to reinforce Appellant’s standing to pursue the claims presented?

[Dkt. 3936].

II.
DESIGNATION OF ITEMS FOR INCLUSION
IN THE APPELLATE RECORD

Vol. 1
1. Notice of Appeal

- a.** Notice of Appeal [Dkt. 3906];
- b.** Amended Notice of Appeal [Dkt. 3908]; and
- c.** Second Amended Notice of Appeal [Dkt. 3945]

2. The judgment, order, or decree appealed from:

- a.** Memorandum Opinion and Order Pursuant to Plan “Gatekeeper Provision” and Pre-Confirmation “Gatekeeper Orders”: Denying Hunter Mountain Investment

000835
000940

Trust's Emergency Motion for Leave to File Adversary Proceedings [Dkts. 3903 & 3904]; and

001045

- b. Order Denying Motion of Hunter Mountain Investment Trust Seeking Relief Pursuant to Federal Rules of Bankruptcy Procedure 7052, 9023, and 9024 [Dkt. 3936].

3. Docket sheet.

001049

- a. Bankruptcy Case No. 19-34054

4. Other Items to be included:

- a. HMIT hereby designates the following items in the record on appeal from Cause No. 19-34054-sgj11:

Vol. 2	FILE DATE	DOCKET NO. (INCLUDING ALL ATTACHMENTS AND APPENDICES)	DESCRIPTION
001594	01/22/2021	1808	Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (As Modified)
001660	02/22/2021	1943	Order (I) Confirming the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified) and (II) Granting Related Relief
001821	09/09/2022	3503	Motion to Conform Plan filed by Highland Capital Management, L.P.
001830	02/27/203	3671	Memorandum Opinion and Order on Reorganized Debtor's Motion to Conform Plan
Vol. 3 001849	03/28/2023	3699 (3699-1 — 3699-5)	HMIT Emergency Motion for Leave to File Verified Adversary Proceeding and Attached Verified Adversary Complaint
Vol. 4 002236	03/28/2023	3700 (3700-1)	HMIT Motion for Expedited Hearing on Emergency Motion for Leave to File Verified Adversary Proceeding
002243	03/30/2023	3704	Farallon, Stonehill, Jessup and Muck Objection to Motion for Expedited Hearing
002248	03/30/2023	3705	HMIT Amended Certificate of Conference

Vol. 5 002251	03/30/2023	3706	HMIT Amended Certificate of Conference
002254	03/30/2023	3707	Highland's Response in Opposition to Emergency Motion for Leave
002262	03/30/2023	3708 (3708-1 — 3708-8)	Declaration of John Morris in Support of the Highland Parties' Objection to Hunter Mountain Investment Trust's Opposed Application for Expedited Hearing on Emergency Motion for Leave to File Verified Adversary Proceeding
002348	03/31/2023	3712	HMIT Reply in Support of Application for Expedited Hearing
002355	03/31/2023	3713	Order Denying Motion for Expedited Hearing
002358	04/04/2023	3718 (3718-1 — 3718-4)	HMIT Motion for Leave to File Appeal
002391	04/04/2023	3719 (3719-1)	HMIT Motion for Expedited Hearing on Motion for Leave to File Appeal
002398	04/05/2023	3720	Order Denying HMIT's Opposed Motion for Expedited Hearing
002400	04/05/2023	3721 (3721-1 — 3721-2) Thru Vol. 7	HMIT Notice of Appeal
Vol. 8 002826	04/06/2023	3726 (3726-1) Thru Vol. 9	Certificate of Mailing regarding HMIT Notice of Appeal
Vol. 9 003257	04/07/2023	3731	Notice of Docketing Transmittal of Notice of Appeal
003260	04/13/2023	3738 (3738-1)	Highland's Opposed Emergency Motion to Modify and Fix a Briefing Schedule and Set a Hearing Date with Respect to HMIT's Emergency Motion for Leave
003270	04/13/2023	3739	Highland's Motion for Expedited Hearing
003278	04/13/2023	3740	Joinder to Highland's Emergency Motion to Modify and Fix Briefing Schedule and Set Hearing Date With Respect to Hunter Mountain Investment Trust's Emergency Motion for Leave to File Verified Adversary Proceeding filed by Farallon

		Capital Management, LLC, Jessup Holdings LLC, Muck Holdings LLC, Stonehill Capital Management LLC	
1	04/13/2023	3741	Notice of Hearing for 04/24/2023 at 1:30 PM
6	04/13/2023	3742	Amended Notice of Hearing for 04/24/2023 at 1:30 PM
11	04/13/2023	3745	Notice of Appearance and Request for Notice by Omar Jesus Alaniz filed by James P. Seery Jr.
94	04/15/2023	3747	Joinder by James P. Seery Jr. to Highland's Emergency Motion to Modify and Fix Briefing Schedule and Set Hearing Date with Respect to Hunter Mountain Investment Trusts Emergency Motion for Leave to File Verified Adversary Proceeding
6	04/17/2023	3748	HMIT's Response and Reservation of Rights
7	04/19/2023	3751	Notice of Status Conference
02	04/21/2023	3758	HMIT's Objection Regarding Evidentiary Hearing and Brief Concerning Gatekeeper Proceedings Relating to "Colorability"
1	04/21/2023	3759	HMIT's Notice of Rescheduling Hearing
14	04/21/2023	3761	HMIT's Objection Regarding Evidentiary Hearing and Brief Concerning Gatekeeper Proceedings Relating to "Colorability" ³
23	04/23/2023	3760 (3760-1)	HMIT's Supplement to Emergency Motion for Leave to File Verified Adversary Proceeding and Attached Verified Adversary Complaint
8	04/25/2023	3765	Transcript of Hearing held on 04/24/2023
30	05/11/2023	3780	Objection to Hunter Mountain Investment Trust's (i) Emergency Motion for Leave to File Verified Adversary Proceeding; and (ii) Supplement to Emergency Motion for Leave to File Verified Adversary Proceeding filed by Farallon Capital Management, LLC, Jessup Holdings LLC, Muck

³ A duplicate of Doc 3758.

Vol. 10 003458		Holdings LLC, Stonehill Capital Management LLC
003463	05/11/2023 3781	Order Fixing Briefing Scheduling and Hearing Date with Respect to HMIT's Emergency Motion for Leave to File Verified Adversary Proceeding as Supplemented
Vol. 11 003537	05/11/2023 3783	Highland and Seery's Joint Response to HMIT's Emergency Motion for Leave
Vol. 17 004665	05/11/2023 3784 (3784-1 — 3784-46) Thru Vol. 16	Declaration of John Morris in Support of Highland Parties' Joint Response
004712	05/18/2023 3785	HMIT's Reply in Support of Emergency Motion for Leave to File Adversary Proceeding
004714	05/22/2023 3787	Order Pertaining to the Hearing on Hunter Mountain Investment Trust's Motion for Leave to File Adversary Proceeding [DE##3699 & 3760]
004808	05/24/2023 3788 (3788-1 — 3788-5)	HMIT's Emergency Motion for Expedited Discovery or, Alternatively, for Continuance of June 8, 2023 Hearing
004813	05/24/2023 3789	HMIT's Application for Expedited Hearing
004836	05/24/2023 3790	Order Pertaining to the Hearing on Hunter Mountain Investment Trust's Motion for Leave to File Adversary Proceeding [DE##3699 & 3760]
Vol. 18 004930	05/25/2023 3791 (3791-1 — 3791-5)	HMIT's Emergency Motion for Expedited Discovery or, Alternatively, for Continuance of June 8, 2023 Hearing
004931	05/25/2023 3792	Order Setting Expedited Hearing
	05/25/2023 3795	Objection to Hunter Mountain Investment Trust's Emergency Motion for Expedited Discovery or, Alternatively, for Continuance of June 8, 2023 Hearing filed by Farallon Capital Management, LLC, Jessup Holdings LLC, Muck Holdings LLC, Stonehill Capital Management LLC

05/25/2023	3798 (3798-1)	Highland Parties' Joint Response in Opposition to HMIT's Emergency Motion for Expedited Discovery
05/26/2023	3800	Order Regarding Hunter Mountain Investment Trust's Emergency Motion for Expedited Discovery or, Alternatively, for Continuance of the June 8, 2023 Hearing
05/28/2023	3801	Order Regarding Hunter Mountain Investment Trust's Emergency Motion for Expedited Discovery or, Alternatively, for Continuance of the June 8, 2023 Hearing
06/05/2023	3815 (3815-1)	Hunter Mountain Investment Trust's Emergency Motion for Leave to File Verified Adversary Proceeding
06/05/2023	3816 (3816-1)	Hunter Mountain Investment Trust's Emergency Motion for Leave to File Verified Adversary Proceeding
06/05/2023	3817 (3817-1 — 3817-5)	Highland Parties' Witness and Exhibit List with Respect to Evidentiary Hearing on June 8, 2023
06/05/2023	3818 (3818-1 — 3818-9)	HMIT's Witness and Exhibit List in Connection with its Emergency Motion for Leave to File Verified Adversary Proceeding, and Supplement
06/07/2023	3820	Highland Parties' Joint Motion to Exclude Testimony and Documents of Scott Van Meter and Steve Pully
06/07/2023	3821 (3821-1 — 3821-3)	Declaration in Support of Highland Parties' Joint Motion to Exclude Testimony and Documents of Scott Van Meter and Steve Pully
06/07/2023	3822 (3822-1)	HMIT's Unopposed Motion to File Exhibit Under Seal [WITHDRAWN]
06/07/2023	3823	Joinder to Joint Motion to Exclude Testimony and Documents of Scott Van Meter and Steve Pully filed by Farallon Capital Management, LLC, Jessup Holdings LLC, Muck Holdings LLC, Stonehill Capital Management LLC

06/07/2023	3824	HMIT's Objections to the Highland Parties' Exhibit and Witness List
06/08/2023	3828	HMIT's Response to Highland Claimant Trust and James P. Seery, Jr.'s Joint Motion to Exclude Testimony and Documents of Experts Scott Van Meter and Steve Pully
06/09/2023	3837	Request for transcript regarding hearing held on 06/08/2023
06/12/2023	3838	Court admitted exhibits on hearing June 8, 2023 (See Docket Entry Nos. 3817 & 3818)
06/12/2023	3841	Highland Parties' Reply in Further Support of their Joint Motion to Exclude Testimony and Documents of Scott Van Meter and Steve Pully
06/12/2023	3842 (3842-1)	Claim Purchasers' Joinder to Highland Capital Management, L.P., Highland Claimant Trust, and James P. Seery Jr.'s Reply in Further Support of Their Joint Motion to Exclude Testimony and Documents of Scott Van Meter and Steve Pully filed by Farallon Capital Management, LLC, Jessup Holdings LLC, Muck Holdings LLC, Stonehill Capital Management LLC
06/13/2023	3843	Transcript regarding Hearing Held 06/08/2023
06/13/2023	3844	Transcript regarding Hearing Held 05/26/2023
06/13/2023	3845	HMIT's Request for Oral Hearing or, Alternatively, a Schedule for Evidentiary Proffer
06/13/2023	3846	Response in Opposition to Hunter Mountain Investment Trust's Request for Oral Argument or, Alternatively, a Schedule for Evidentiary Proffer filed by Debtor Highland Capital Management, L.P., Other Professional Highland Claimant Trust, Creditor James P. Seery Jr.
06/13/2023	3847	HMIT's Reply to the Highland Parties' Response to Request for Oral Hearing
06/16/2023	3853	Memorandum Opinion and Order Granting Joint Motion to Exclude Expert Evidence

Vol. 42 009928	06/16/2023	3854	Memorandum Opinion and Order Granting Joint Motion to Exclude Expert Evidence
009944	06/19/2023	3858 (3858-1 — 3858-2)	Hunter Mountain Investment Trust's Evidentiary Proffer Pursuant to Rule 103(a)(2) ⁴
010013	06/23/2023	3860	The Highland Parties' Objections to and Motion to Strike Hunter Mountain Investment Trust's Purported Proffer
010023	06/23/2023	3861	Claim Purchasers' Joinder to the Highland Parties' Objections and Motion to Strike Hunter Mountain Investment Trust's Purported Proffer
010025	07/05/2023	3869	Order Striking HMIT's Evidentiary Proffer Pursuant to Rule 103(a)(2) and Limiting Briefing
010029	07/06/2023	3872	Notice of Filing of the Current Balance Sheet of the Highland Claimant Trust filed by Debtor Highland Capital Management, L.P. and the Highland Claimant Trust
010035	07/21/2023	3888	Post-Confirmation Report for Highland Capital Management, LP for the Quarter Ending June 30, 2023 filed by Highland Capital Management, L.P.
010047	07/21/2023	3889	Post-Confirmation Report for Highland Capital Management, LP for the Quarter Ending June 30, 2023 filed by the Highland Claimant Trust
010059	08/17/2023	3901	Withdrawal of HMIT's Unopposed Motion to File Exhibit Under Seal filed by Creditor Hunter Mountain Investment Trust
Vol. 43 010062	09/08/2023	3905 (3905-1 — 3905-6)	Motion to Alter or Amend Order, to Amend or Make Additional Findings, for Relief from Order, or, Alternatively, for New Trial Under Federal Rules of Bankruptcy Procedure 7052, 9023, and 9024 and Incorporated Relief Filed by Creditor Hunter Mountain Investment Trust

⁴ HMIT understands that the Court struck this proffer in docket entry 3869. Because the proffer appears to remain on the record and to avoid any argument that HMIT has failed its burden to designate the record, HMIT designates this docket entry out of an abundance of caution.

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09/11/2023	3907	Clerk's Correspondence regarding HMIT's Notice of Appeal
09/22/2023	3928	Notice Regarding Appeal and Pending Post-Judgment Motion filed by HMIT

B. Exhibits.

Further, the Parties submitted hearing exhibits. HMIT designates for inclusion in the record for appeal all the hearing exhibits submitted to the Court, which were all electronically filed and are in the Court's record and are a part of this Appellate Record. (Docs. 3817 and 3818). The following exhibits are submitted and included in the Court's record:

<u>HMIT Exhibits</u> (Dkts. 3818, 3818-1, 3818-2, 3818-3, 3818-4, 3818-5, 3818-6, 3818-7, 3818-8, and 3818-9)
HMIT Exhibits 1-4, 6-80
<u>HCM Exhibits</u> (Dkts. 3817, 3817-1, 3817-2, 3817-3, 3817-4, 3817-5)
HCM Exhibits 2-15, 25-34, 36, 38-42, 45-46, 51, 59-60, 100

Dated: October 23, 2023

Respectfully Submitted,

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CERTIFICATE OF SERVICE

A true and correct copy of the foregoing document was served via ECF notification on October 23, 2023, on all parties receiving electronic notification.

/s/ Sawnie A. McEntire
Sawnie A. McEntire

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HMIT Exhibit No. 17

HMIT Exhibit No. 18

007237

1 IN THE UNITED STATES BANKRUPTCY COURT
2 FOR THE NORTHERN DISTRICT OF TEXAS
3 DALLAS DIVISION

4 -----)

5 In Re: Chapter 11
6 HIGHLAND CAPITAL Case No.
7 MANAGEMENT, LP, 19-34054-SGJ 11

8
9 Debtor
10 -----
11
12

13 REMOTE DEPOSITION OF JAMES P. SEERY, JR.

14 January 29, 2021

15 10:11 a.m. EST
16
17
18
19
20
21
22

23 Reported by:
24 Debra Stevens, RPR-CRR
25 JOB NO. 189212

<p>Page 2</p> <p>1 January 29, 2021</p> <p>2 9:00 a.m. EST</p> <p>3</p> <p>4 Remote Deposition of JAMES P.</p> <p>5 SEERY, JR., held via Zoom</p> <p>6 conference, before Debra Stevens,</p> <p>7 RPR/CRR and a Notary Public of the</p> <p>8 State of New York.</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>Page 3</p> <p>1 REMOTE APPEARANCES:</p> <p>2</p> <p>3 Heller, Draper, Hayden, Patrick, & Horn</p> <p>4 Attorneys for The Dugaboy Investment</p> <p>5 Trust and The Get Good Trust</p> <p>6 650 Poydras Street</p> <p>7 New Orleans, Louisiana 70130</p> <p>8</p> <p>9</p> <p>10 BY: DOUGLAS DRAPER, ESQ</p> <p>11</p> <p>12</p> <p>13 PACHULSKI STANG ZIEHL & JONES</p> <p>14 For the Debtor and the Witness Herein</p> <p>15 780 Third Avenue</p> <p>16 New York, New York 10017</p> <p>17 BY: JOHN MORRIS, ESQ.</p> <p>18 JEFFREY POMERANTZ, ESQ.</p> <p>19 GREGORY DEMO, ESQ.</p> <p>20 IRA KHARASCH, ESQ.</p> <p>21</p> <p>22</p> <p>23</p> <p>24 (Continued)</p> <p>25</p>
<p>Page 4</p> <p>1 REMOTE APPEARANCES: (Continued)</p> <p>2</p> <p>3 LATHAM & WATKINS</p> <p>4 Attorneys for UBS</p> <p>5 885 Third Avenue</p> <p>6 New York, New York 10022</p> <p>7 BY: SHANNON McLAUGHLIN, ESQ.</p> <p>8</p> <p>9 JENNER & BLOCK</p> <p>10 Attorneys for Redeemer Committee of</p> <p>11 Highland Crusader Fund</p> <p>12 919 Third Avenue</p> <p>13 New York, New York 10022</p> <p>14 BY: MARC B. HANKIN, ESQ.</p> <p>15</p> <p>16 SIDLEY AUSTIN</p> <p>17 Attorneys for Creditors' Committee</p> <p>18 2021 McKinney Avenue</p> <p>19 Dallas, Texas 75201</p> <p>20 BY: PENNY REID, ESQ.</p> <p>21 MATTHEW CLEMENTE, ESQ.</p> <p>22 PAIGE MONTGOMERY, ESQ.</p> <p>23</p> <p>24 (Continued)</p> <p>25</p>	<p>Page 5</p> <p>1 REMOTE APPEARANCES: (Continued)</p> <p>2 KING & SPALDING</p> <p>3 Attorneys for Highland CLO Funding, Ltd.</p> <p>4 500 West 2nd Street</p> <p>5 Austin, Texas 78701</p> <p>6 BY: REBECCA MATSUMURA, ESQ.</p> <p>7</p> <p>8 K&L GATES</p> <p>9 Attorneys for Highland Capital Management</p> <p>10 Fund Advisors, L.P., et al.:</p> <p>11 4350 Lassiter at North Hills</p> <p>12 Avenue</p> <p>13 Raleigh, North Carolina 27609</p> <p>14 BY: EMILY MATHER, ESQ.</p> <p>15</p> <p>16 MUNSCH HARDT KOPF & HARR</p> <p>17 Attorneys for Defendants Highland Capital</p> <p>18 Management Fund Advisors, LP; NexPoint</p> <p>19 Advisors, LP; Highland Income Fund;</p> <p>20 NexPoint Strategic Opportunities Fund and</p> <p>21 NexPoint Capital, Inc.:</p> <p>22 500 N. Akard Street</p> <p>23 Dallas, Texas 75201-6659</p> <p>24 BY: DAVOR RUKAVINA, ESQ.</p> <p>25 (Continued)</p>

<p>Page 6</p> <p>1 REMOTE APPEARANCES (Continued)</p> <p>2</p> <p>3 BONDS ELLIS EPPICH SCHAFER JONES</p> <p>4 Attorneys for James Dondero,</p> <p>5 Party-in-Interest</p> <p>6 420 Throckmorton Street</p> <p>7</p> <p>8 Fort Worth, Texas 76102</p> <p>9 BY: CLAY TAYLOR, ESQ.</p> <p>10 JOHN BONDS, ESQ.</p> <p>11 BRYAN ASSINK, ESQ.</p> <p>12</p> <p>13</p> <p>14 BAKER MCKENZIE</p> <p>15 Attorneys for Senior Employees</p> <p>16 1900 North Pearl Street</p> <p>17</p> <p>18 Dallas, Texas 75201</p> <p>19 BY: MICHELLE HARTMANN, ESQ.</p> <p>20 DEBRA DANDEREAU, ESQ.</p> <p>21</p> <p>22</p> <p>23</p> <p>24 (Continued)</p> <p>25</p>	<p>Page 7</p> <p>1 REMOTE APPEARANCES: (Continued)</p> <p>2</p> <p>3 WICK PHILLIPS</p> <p>4 Attorneys for NexPoint Real Estate</p> <p>5 Partners, NexPoint Real Estate Entities</p> <p>6 and NexBank</p> <p>7 100 Throckmorton Street</p> <p>8 Fort Worth, Texas 76102</p> <p>9 BY: LAUREN DRAWHORN, ESQ.</p> <p>10</p> <p>11 ROSS & SMITH</p> <p>12 Attorneys for Senior Employees, Scott</p> <p>13 Ellington, Isaac Leventon, Thomas Surgent,</p> <p>14 Frank Waterhouse</p> <p>15 700 N. Pearl Street</p> <p>16 Dallas, Texas 75201</p> <p>17 BY: FRANCES SMITH, ESQ.</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p>Page 8</p> <p>1</p> <p>2 E X A M I N A T I O N S</p> <p>3 WITNESS PAGE</p> <p>4 JAMES SEERY</p> <p>5 By Mr. Draper 9</p> <p>6 By Mr. Taylor 75</p> <p>7 By Mr. Rukavina 165</p> <p>8 By Mr. Draper 217</p> <p>9</p> <p>10 E X H I B I T S</p> <p>11 SEERY DYD</p> <p>12 EXHIBIT DESCRIPTION PAGE</p> <p>13 Exhibit 1 January 2021 Material 11</p> <p>14 Exhibit 2 Disclosure Statement 14</p> <p>15 Exhibit 3 Notice of Deposition 74</p> <p>16</p> <p>17 INFORMATION/PRODUCTION REQUESTS</p> <p>18 DESCRIPTION PAGE</p> <p>19 Subsidiary ledger showing note 22</p> <p>20 component versus hard asset</p> <p>21 component</p> <p>22 Amount of D&O coverage for 131</p> <p>23 trustees</p> <p>24 Line item for D&O insurance 133</p> <p>25</p> <p>1 MARKED FOR RULING</p> <p>2 PAGE LINE</p> <p>3 85 20</p> <p>4</p> <p>5</p>	<p>Page 9</p> <p>1</p> <p>2 COURT REPORTER: My name is</p> <p>3 Debra Stevens, court reporter for TSG</p> <p>4 Reporting and notary public of the</p> <p>5 State of New York. Due to the</p> <p>6 severity of the COVID-19 pandemic and</p> <p>7 following the practice of social</p> <p>8 distancing, I will not be in the same</p> <p>9 room with the witness but will report</p> <p>10 this deposition remotely and will</p> <p>11 swear the witness in remotely. If any</p> <p>12 party has any objection, please so</p> <p>13 state before we proceed.</p> <p>14 Whereupon,</p> <p>15 J A M E S S E E R Y,</p> <p>16 having been first duly sworn/affirmed,</p> <p>17 was examined and testified as follows:</p> <p>18 EXAMINATION BY</p> <p>19 MR. DRAPER:</p> <p>20 Q. Mr. Seery, my name is Douglas</p> <p>21 Draper, representing the Dugaboy Trust. I</p> <p>22 have series of questions today in</p> <p>23 connection with the 30(b) Notice that we</p> <p>24 filed. The first question I have for you,</p> <p>25 have you seen the Notice of Deposition</p>

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<p>1 J. SEERY</p> <p>2 that we sent out?</p> <p>3 A. Yes.</p> <p>4 Q. You are the person most</p> <p>5 qualified to answer the areas of inquiry</p> <p>6 identified in the 30(b) Deposition Notice?</p> <p>7 A. Yes.</p> <p>8 Q. And if in fact when we go</p> <p>9 through this, if you are not the most</p> <p>10 qualified person, I'd ask you to identify</p> <p>11 who would be most qualified to provide the</p> <p>12 answers. Is that okay?</p> <p>13 A. I think I am the most qualified.</p> <p>14 But if there is something I can't answer I</p> <p>15 will endeavor to figure out who could.</p> <p>16 Q. Great. Thank you very much.</p> <p>17 Yesterday we were furnished by</p> <p>18 Mr. Morris a new set of what I will call</p> <p>19 plan analysis versus liquidation analysis.</p> <p>20 MR. DRAPER: Bryan, can you put</p> <p>21 that document up?</p> <p>22 Q. Mr. Seery, can you get your</p> <p>23 hands on that document?</p> <p>24 THE WITNESS: Is that in the</p> <p>25 pieces you sent to me, John?</p>	<p>1 J. SEERY</p> <p>2 MR. MORRIS: Yes.</p> <p>3 THE WITNESS: Do you recall</p> <p>4 which one? I will open them all.</p> <p>5 It's not a big deal.</p> <p>6 Q. Bryan has put the document up</p> <p>7 for you.</p> <p>8 THE WITNESS: John, I don't see</p> <p>9 it in the ones you sent to me. I can</p> <p>10 see it on the screen. I have the plan</p> <p>11 of reorg, I have got the disclosure</p> <p>12 statement, schedules. I have</p> <p>13 bankruptcy schedules from the filing.</p> <p>14 MR. MORRIS: Hold on one second.</p> <p>15 See if it is among what I just sent</p> <p>16 you.</p> <p>17 (Reporter interruption.)</p> <p>18 (So marked for identification as</p> <p>19 Seery Exhibit 1.)</p> <p>20 THE WITNESS: Okay. I am</p> <p>21 looking at it. It is easier to see on</p> <p>22 my screen than yours. We can do it</p> <p>23 either way.</p> <p>24 BY MR. DRAPER:</p> <p>25 Q. Did you prepare this document?</p>
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<p>1 J. SEERY</p> <p>2 A. It was prepared for me.</p> <p>3 Q. It was prepared under your</p> <p>4 supervision. Correct?</p> <p>5 A. Correct.</p> <p>6 Q. Who worked on the team?</p> <p>7 A. The team from DSI.</p> <p>8 Q. Who at DSI?</p> <p>9 A. The team working on the case.</p> <p>10 It is Fred Caruso, Jack Donohue, James</p> <p>11 Romey as well as counsel and myself.</p> <p>12 Q. If in fact there is a question</p> <p>13 that I ask you about this document that</p> <p>14 you don't know the answer, can you</p> <p>15 identify for me the person --</p> <p>16 (Reporter interruption.)</p> <p>17 Q. Mr. Seery, if in fact you don't</p> <p>18 know an answer to a question about the</p> <p>19 document, I would ask you to identify the</p> <p>20 person at DSI who is most responsible for</p> <p>21 the piece of information on the document.</p> <p>22 MR. MORRIS: Objection to the</p> <p>23 form of the question. He is here as</p> <p>24 the 30(b)(6) witness. We have offered</p> <p>25 him as the person who is prepared to</p>	<p>1 J. SEERY</p> <p>2 answer the questions. Just ask the</p> <p>3 questions. If he doesn't know</p> <p>4 something, we'll decide whether or not</p> <p>5 it warrants going elsewhere. But</p> <p>6 let's just move on. It is like the</p> <p>7 third time you asked him if he can</p> <p>8 identify -- we don't even have</p> <p>9 something that he doesn't know yet.</p> <p>10 Q. Mr. Seery, is the team that</p> <p>11 prepared this document the same team that</p> <p>12 prepared the November similar document</p> <p>13 that is attached to the disclosure</p> <p>14 statement in November?</p> <p>15 A. Largely.</p> <p>16 Q. This new document was prepared</p> <p>17 to reflect information I gather that was</p> <p>18 changed from November 20th of 2020 to</p> <p>19 today's date?</p> <p>20 A. Yes.</p> <p>21 Q. In looking at the two</p> <p>22 documents -- and I would ask you to go to</p> <p>23 the disclosure statement of November 2020.</p> <p>24 I think it is page 174.</p> <p>25 MR. MORRIS: Can you move it on</p>

<p style="text-align: right;">Page 14</p> <p>1 J. SEERY</p> <p>2 the screen, please?</p> <p>3 A. Page what?</p> <p>4 Q. I think it is page 174.</p> <p>5 A. Of the PDF or of the document?</p> <p>6 Q. Of the disclosure statement that</p> <p>7 was filed. It is up on the screen right</p> <p>8 now.</p> <p>9 COURT REPORTER: Do you intend</p> <p>10 this as another exhibit for today's</p> <p>11 deposition?</p> <p>12 MR. DRAPER: We'll mark this</p> <p>13 Exhibit 2.</p> <p>14 (So marked for identification as</p> <p>15 Seery Exhibit 2.)</p> <p>16 Q. If you look to the recovery to</p> <p>17 Class 8 creditors in the November 2020</p> <p>18 disclosure statement was a recovery of</p> <p>19 87.44 percent?</p> <p>20 A. That actually says the percent</p> <p>21 distribution to general unsecured</p> <p>22 creditors was 87.44 percent. Yes.</p> <p>23 Q. And in the new document that was</p> <p>24 filed, given to us yesterday, the recovery</p> <p>25 is 62.5 percent?</p>	<p style="text-align: right;">Page 15</p> <p>1 J. SEERY</p> <p>2 A. It says the percent distribution</p> <p>3 to general unsecured creditors is</p> <p>4 62.14 percent.</p> <p>5 Q. Have you communicated the</p> <p>6 reduced recovery to anybody prior to the</p> <p>7 date -- to yesterday?</p> <p>8 MR. MORRIS: Objection to the</p> <p>9 form of the question.</p> <p>10 A. I believe generally, yes. I</p> <p>11 don't know if we have a specific number,</p> <p>12 but generally yes.</p> <p>13 Q. And would that be members of the</p> <p>14 Creditors' Committee who you gave that</p> <p>15 information to?</p> <p>16 A. Yes.</p> <p>17 Q. Did you give it to anybody other</p> <p>18 than members of the Creditors' Committee?</p> <p>19 A. Yes.</p> <p>20 Q. Who?</p> <p>21 A. HarbourVest.</p> <p>22 Q. And when was that?</p> <p>23 A. Within the last two months.</p> <p>24 Q. You did not feel the need to</p> <p>25 communicate the change in recovery to</p>
<p style="text-align: right;">Page 16</p> <p>1 J. SEERY</p> <p>2 anybody else?</p> <p>3 A. I said Mr. Doherty.</p> <p>4 Q. In looking at the two elements,</p> <p>5 and what I have asked you to look at is</p> <p>6 the claims pool. If you look at the</p> <p>7 November disclosure statement, if you look</p> <p>8 down Class 8, unsecured claims?</p> <p>9 A. Yes.</p> <p>10 Q. You have 176,000 roughly?</p> <p>11 A. Million.</p> <p>12 Q. 176 million. I am sorry. And</p> <p>13 the number in the new document is 313</p> <p>14 million?</p> <p>15 A. Correct.</p> <p>16 Q. What accounts for the</p> <p>17 difference?</p> <p>18 A. An increase in claims.</p> <p>19 Q. When did those increases occur?</p> <p>20 Were they yesterday? A month ago? Two</p> <p>21 months ago?</p> <p>22 A. Over the last couple months.</p> <p>23 Q. So in fact over the last couple</p> <p>24 months you knew in fact that the recovery</p> <p>25 in the November disclosure statement was</p>	<p style="text-align: right;">Page 17</p> <p>1 J. SEERY</p> <p>2 not accurate?</p> <p>3 A. Yes. We secretly disclosed it</p> <p>4 to the Bankruptcy Court in open court</p> <p>5 hearings.</p> <p>6 Q. But you never did bother to</p> <p>7 calculate the reduced recovery; you just</p> <p>8 increased --</p> <p>9 (Reporter interruption.)</p> <p>10 Q. You just advised as to the</p> <p>11 increased claims pool. Correct?</p> <p>12 MR. MORRIS: Objection to the</p> <p>13 form of the question.</p> <p>14 A. I don't understand your</p> <p>15 question.</p> <p>16 Q. What I am trying to get at is,</p> <p>17 as you increase the claims pool, the</p> <p>18 recovery reduces. Correct?</p> <p>19 A. No. That is not how a fraction</p> <p>20 works.</p> <p>21 Q. Well, if the denominator</p> <p>22 increases, doesn't the recovery ultimately</p> <p>23 decrease if --</p> <p>24 A. No.</p> <p>25 Q. -- if the numerator stays the</p>

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<p>1 J. SEERY</p> <p>2 same?</p> <p>3 A. Now your question is correctly</p> <p>4 stated.</p> <p>5 Q. Thank you.</p> <p>6 Now, in connection with the</p> <p>7 proceeds from the liquidation of the</p> <p>8 assets in both the plan recovery and the</p> <p>9 liquidation model -- and I will go back to</p> <p>10 the January document that we just got.</p> <p>11 Did you personally determine the estimated</p> <p>12 proceeds, or that was done by the DSI</p> <p>13 people?</p> <p>14 A. Can you ask your question again?</p> <p>15 I am looking at two different documents so</p> <p>16 I don't know what you are asking me.</p> <p>17 Q. Let's go to the January</p> <p>18 document. If you will see, in line 2,</p> <p>19 where you have plan versus liquidation?</p> <p>20 A. Yes.</p> <p>21 Q. You will see in line 2 it says</p> <p>22 estimated proceeds 257, and then there is</p> <p>23 191?</p> <p>24 A. Yes.</p> <p>25 Q. Do you see those numbers?</p>	<p>1 J. SEERY</p> <p>2 A. Yes.</p> <p>3 Q. Is that your number? That is</p> <p>4 the number you came up with?</p> <p>5 A. Correct.</p> <p>6 MR. MORRIS: Objection to the</p> <p>7 form of the question. It is the</p> <p>8 Debtor's number.</p> <p>9 Q. Mr. Seery, what I have asked you</p> <p>10 to look at is the statement of assumptions</p> <p>11 in the January document, and look at</p> <p>12 assumption P. Just so I can read it, it</p> <p>13 says, "See below the Class 8 estimated</p> <p>14 payout schedule" and then it lists a</p> <p>15 September 30, 2021 date, a March 31, 2022</p> <p>16 date, and a June 30, 2022 date. Do you</p> <p>17 see that?</p> <p>18 A. I do.</p> <p>19 Q. Is that your assumption, or an</p> <p>20 assumption made by DSI?</p> <p>21 A. That is my assumption.</p> <p>22 Q. That footnote P is the same note</p> <p>23 that was in the November 2020 disclosure</p> <p>24 statement. Correct?</p> <p>25 A. I'd have to look.</p>
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<p>1 J. SEERY</p> <p>2 Q. Do you want to take a look? Let</p> <p>3 me tell you it is, but you can confirm</p> <p>4 that.</p> <p>5 A. It appears to be, yes.</p> <p>6 Q. Now, going back to the 257,941</p> <p>7 that is in the January statement?</p> <p>8 A. The second line?</p> <p>9 Q. Yes. What percentage of that</p> <p>10 are notes -- collection from notes versus</p> <p>11 collection from liquidation of assets?</p> <p>12 A. The total percentage, I don't</p> <p>13 recall the exact percentage off the top of</p> <p>14 my head. It includes all the demand notes</p> <p>15 and the demanded note from NexPoint</p> <p>16 Advisors. So, it should be around</p> <p>17 \$40 million worth of value would come from</p> <p>18 the notes. Somewhere in that</p> <p>19 neighborhood.</p> <p>20 Q. So roughly what we are talking</p> <p>21 about when we break up the 257 is, doing</p> <p>22 rough math, 210 being assets, 40 million</p> <p>23 being note collection?</p> <p>24 A. Roughly, I believe. I don't</p> <p>25 have it off the top of my head but that is</p>	<p>1 J. SEERY</p> <p>2 rough numbers. We have made demand, I</p> <p>3 think it is about 40 million, 24 million</p> <p>4 on NexPoint and then 8 million on HCFMA,</p> <p>5 roughly. And then somewhere around 8</p> <p>6 million on Dondero, all for notes that</p> <p>7 were either demanded because they were</p> <p>8 able to be demanded or accelerated because</p> <p>9 they were defaulted.</p> <p>10 Q. And then in the liquidation</p> <p>11 analysis you have \$191 million. What</p> <p>12 percentage of that is note collection</p> <p>13 versus what percentage of that is</p> <p>14 liquidation of assets?</p> <p>15 A. The same amount for the demanded</p> <p>16 notes, and the non-demand notes are a</p> <p>17 reduced amount because they are assumed to</p> <p>18 be sold.</p> <p>19 Q. So that doesn't answer my</p> <p>20 question. In the 257, you had a</p> <p>21 \$40 million figure. Correct?</p> <p>22 A. Approximately.</p> <p>23 Q. Do you have a \$40 million figure</p> <p>24 in the 191?</p> <p>25 A. I believe it does.</p>

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1 J. SEERY

2 Q. Excuse me?

3 A. I believe it does.

4 Q. Is there a subsidiary ledger

5 that would tell me what is the note

6 component versus what is the hard asset

7 component?

8 A. Yes.

9 Q. Who has that?

10 A. I do.

11 MR. DRAPER: Mr. Morris, can I

12 get that document?

13 MR. MORRIS: I will take it

14 under advisement.

15 Q. There is also a Dugaboy note in

16 your notes that is to be sold. Is that

17 Dugaboy note in the \$40 million, or is it

18 in the hard asset monetization?

19 A. I believe it is in the -- it is

20 to be sold, so it is not collected in

21 full. If they default, then we would

22 accelerate that and collect that in full

23 as well.

24 Q. That doesn't answer my question

25 unfortunately. What I am asking you, is

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1 J. SEERY

2 A. It wasn't a question. I agree

3 with your statement; yes.

4 Q. Thank you.

5 Now, let's go to the

6 November 2020 schedule that we had. If

7 you see in the line "Estimated proceeds

8 from monetization of assets," you had

9 \$190 million under the plan analysis?

10 A. Yes.

11 Q. What percentage of that are

12 notes versus hard assets?

13 A. The demand notes only were

14 included in the proceeds in terms of

15 recovery in full. I don't quite

16 understand your distinction between hard

17 assets. There is a lot of intangibles as

18 well as tangibles in the total.

19 But if we are distinguishing

20 between notes and other assets, the demand

21 notes are included in the 190. The longer

22 dated notes are assumed to be sold. So,

23 they are included but they are included at

24 a much lower amount.

25 Q. Okay. Now how much of the

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1 J. SEERY

2 it in the \$40 million calculation, or in

3 the \$200 million number?

4 A. It doesn't answer your question

5 because you didn't listen to my prior

6 answer. I said that the 40 million

7 calculation was for stuff that had been

8 demanded. I think you represent -- do you

9 represent Dugaboy? I don't think we

10 demanded --

11 Q. I do. Excuse me?

12 A. So if it wasn't demanded, it is

13 not in the hard asset calculation; it's in

14 the discounted amount.

15 Q. Let me try to understand your

16 answer. What you are telling me, just so

17 we are both clear, is that that Dugaboy

18 note is not in the \$40 million; it is in

19 the balance of the 257? That is a yes or

20 no answer.

21 A. I didn't take it as a question.

22 It sounded like a statement. I agree with

23 your statement.

24 Q. Thank you. So the answer is

25 yes?

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1 J. SEERY

2 demand notes in the 190, Mr. Seery?

3 A. Off the top of my head I don't

4 recall. It is the Dondero demand notes as

5 well as the HCFMA demand notes, so it

6 should be about 15 to \$20 million.

7 Somewhere in that realm. The same as the

8 other demand notes.

9 Q. Were the other notes, the

10 \$40 million of notes that you referenced

11 in the January document, were they carried

12 at face or at discounted amount in the

13 190?

14 A. In the 190, the ones that were

15 demand were carried at face. The ones

16 that were long dated, which really at that

17 point I believe -- the only difference is

18 the \$24-and-change-million NexPoint

19 Advisors note was at a discounted amount.

20 The others were at face.

21 Q. What was the discount that was

22 applied to that note?

23 A. I don't recall off the top of my

24 head. It is pretty significant because of

25 the long dated nature of the notes. They

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<p>1 J. SEERY</p> <p>2 were amended without consideration a few</p> <p>3 years ago. So, for our purposes we didn't</p> <p>4 make the assumption, which I am sure will</p> <p>5 happen, a fraudulent conveyance claim on</p> <p>6 those notes, that a fraudulent conveyance</p> <p>7 action would be brought. We just assumed</p> <p>8 that we'd have to discount the notes</p> <p>9 heavily to sell them because nobody would</p> <p>10 respect the ability of the counterparties</p> <p>11 to fairly pay.</p> <p>12 Q. And the same discount was</p> <p>13 applied in the liquidation analysis to</p> <p>14 those notes?</p> <p>15 A. Yes.</p> <p>16 Q. Now --</p> <p>17 A. The difference -- there would be</p> <p>18 a difference, though, because they would</p> <p>19 pay for a while because they wouldn't want</p> <p>20 to accelerate them. So there would be</p> <p>21 some collections on the notes for P and I.</p> <p>22 Q. But in fact as of January you</p> <p>23 have accelerated those notes?</p> <p>24 A. Just one of them, I believe.</p> <p>25 Q. Which note was that?</p>	<p>1 J. SEERY</p> <p>2 A. NexPoint, I said. They</p> <p>3 defaulted on the note and we accelerated</p> <p>4 it.</p> <p>5 Q. So there is no need to file a</p> <p>6 fraudulent conveyance suit with respect to</p> <p>7 that note. Correct, Mr. Seery?</p> <p>8 MR. MORRIS: Objection to the</p> <p>9 form of the question.</p> <p>10 A. Disagree. Since it was likely</p> <p>11 intentional fraud, there may be other</p> <p>12 recoveries on it. But to collect on the</p> <p>13 note, no.</p> <p>14 Q. My question was with respect to</p> <p>15 that note. Since you have accelerated it,</p> <p>16 you don't need to deal with the issue of</p> <p>17 when it's due?</p> <p>18 MR. MORRIS: Objection to the</p> <p>19 form of the question.</p> <p>20 A. That wasn't your question. But</p> <p>21 to that question, yes, I don't need to</p> <p>22 deal with when it's due.</p> <p>23 Q. Let me go over certain assets.</p> <p>24 I am not going to ask you for the</p> <p>25 valuation of them but I am going to ask</p>
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<p>1 J. SEERY</p> <p>2 you whether they are included in the asset</p> <p>3 portion of your \$257 million number, all</p> <p>4 right? Mr. Morris didn't want me to go</p> <p>5 into specific asset value, and I don't</p> <p>6 intend to do that.</p> <p>7 The first question I have for</p> <p>8 you is, the equity in Trustway Highland</p> <p>9 Holdings, is that included in the</p> <p>10 \$257 million number?</p> <p>11 A. There is no such entity.</p> <p>12 Q. Then I will do it in a different</p> <p>13 way. In connection with the sale of the</p> <p>14 hard assets, what assets are included in</p> <p>15 there specifically?</p> <p>16 A. Off the top of my head -- it is</p> <p>17 all of the assets, but it includes</p> <p>18 Trustway Holdings and all the value that</p> <p>19 flows up from Trustway Holdings. It</p> <p>20 includes Targa and all the value that</p> <p>21 flows up from Targa. It includes CCS</p> <p>22 Medical and all the value that would flow</p> <p>23 to the Debtor from CCS Medical. It</p> <p>24 includes Cornerstone and all the value</p> <p>25 that would flow from Cornerstone. It</p>	<p>1 J. SEERY</p> <p>2 includes any other securities and all the</p> <p>3 value that would flow from Cornerstone.</p> <p>4 It includes HCLOF and all the value that</p> <p>5 would flow up from HCLOF. It includes</p> <p>6 Korea and all the value that would flow up</p> <p>7 from Korea.</p> <p>8 There may be others off the top</p> <p>9 of my head. I don't recall them. I don't</p> <p>10 have a list in front of me.</p> <p>11 Q. Now, with respect to those</p> <p>12 assets, have you started the sale process</p> <p>13 of those assets?</p> <p>14 A. No. Well, each asset is</p> <p>15 different. So, the answer is, with</p> <p>16 respect to any securities, we do seek to</p> <p>17 sell those regularly and we do seek to</p> <p>18 monetize those assets where we can</p> <p>19 depending on whether there is a</p> <p>20 restriction or not and whether there is</p> <p>21 liquidity in the market.</p> <p>22 With respect to the PE assets or</p> <p>23 the companies I described -- Targa, CCS,</p> <p>24 Cornerstone, JHT -- we have not --</p> <p>25 Trustway. We have not sought to sell</p>

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<p>1 J. SEERY</p> <p>2 those assets yet.</p> <p>3 Q. In connection -- you have sold</p> <p>4 one business, which Mr. Dondero and</p> <p>5 Mr. Lynne raised an issue about and that</p> <p>6 is the SSP sale?</p> <p>7 A. Yes.</p> <p>8 Q. How was that sale effectuated?</p> <p>9 A. What do you mean? Cash versus</p> <p>10 securities or do you want description of</p> <p>11 the process?</p> <p>12 Q. The process.</p> <p>13 A. How far back would you like me</p> <p>14 to start?</p> <p>15 Q. Let's start from the time -- how</p> <p>16 did you obtain an offer for that asset?</p> <p>17 A. Then I can start from the</p> <p>18 beginning if you like.</p> <p>19 Q. That's fine.</p> <p>20 A. When the board was installed we</p> <p>21 took a review of all of the assets of the</p> <p>22 company. We met with the various teams at</p> <p>23 Highland who were managing those assets,</p> <p>24 including the PE team that was managing</p> <p>25 SSP. We examined the performance of SSP</p>	<p>1 J. SEERY</p> <p>2 and its conditions. We looked at the</p> <p>3 opportunity to invest in the company,</p> <p>4 which we determined we didn't have the</p> <p>5 ability to do, or to monetize it another</p> <p>6 way or just to hold it for a better</p> <p>7 market.</p> <p>8 We determined with the team,</p> <p>9 after advice from the PE team, that</p> <p>10 investments had to be made in the company</p> <p>11 in order to make it competitive and that</p> <p>12 those capital investments would need to be</p> <p>13 made relatively quickly. We determined</p> <p>14 with the team that the asset had a value</p> <p>15 that we would like to try to receive, and</p> <p>16 if we could receive that we should do so</p> <p>17 because we weren't going to be able to</p> <p>18 make the investments.</p> <p>19 Primarily the biggest issues</p> <p>20 were their ability to compete with much,</p> <p>21 much larger competitors and the need to</p> <p>22 deal with those competitors who were also</p> <p>23 customers. Without the investments we</p> <p>24 thought that the company could be at</p> <p>25 substantial risk. Our PE team also talked</p>
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<p>1 J. SEERY</p> <p>2 to the management team, who concurred with</p> <p>3 that assessment.</p> <p>4 We went about trying to raise</p> <p>5 capital internally to try to do some of</p> <p>6 the work for CapEx at the company to put</p> <p>7 it in the best position to seek to</p> <p>8 monetize the value over some period of</p> <p>9 time -- we didn't have a fixed period. We</p> <p>10 looked at opportunities where investors</p> <p>11 came and proposed bids for the company.</p> <p>12 We considered them, talked to external</p> <p>13 bankers, talked to the internal team and</p> <p>14 determined that if we could get</p> <p>15 \$50 million we believed that would have</p> <p>16 been fair value for the company.</p> <p>17 We received numerous bids,</p> <p>18 competed off a couple bids against each</p> <p>19 other and ended up going with a company</p> <p>20 called Race Rock. Race Rock ultimately</p> <p>21 closed the transaction with us.</p> <p>22 Management concurred, management went</p> <p>23 along with that transaction and we closed</p> <p>24 it.</p> <p>25 Q. Will the same process in essence</p>	<p>1 J. SEERY</p> <p>2 be employed for the sale of the other</p> <p>3 businesses?</p> <p>4 A. Not necessarily, no.</p> <p>5 Q. Who ran the SSP sale process?</p> <p>6 A. No one person. We had a team of</p> <p>7 people at Highland that were the PE team</p> <p>8 sitting on top of it. They worked with me</p> <p>9 to drive the process.</p> <p>10 Q. Would the same PE team be</p> <p>11 employed or used to sell the other</p> <p>12 businesses?</p> <p>13 A. Not necessarily.</p> <p>14 (Proceedings interrupted;</p> <p>15 technical interruption.)</p> <p>16 Q. Mr. Seery, the only --</p> <p>17 MR. MORRIS: I am having a</p> <p>18 difficult time hearing you, Douglas.</p> <p>19 Q. Mr. Seery, the only external</p> <p>20 people to Highland in that process, if I</p> <p>21 understand, are you, the internal board</p> <p>22 and DSI. Is that correct?</p> <p>23 A. No.</p> <p>24 Q. Am I correct in that?</p> <p>25 A. No.</p>

<p style="text-align: right;">Page 34</p> <p>1 J. SEERY</p> <p>2 Q. Who else is external?</p> <p>3 A. External counsel, both</p> <p>4 bankruptcy and corporate.</p> <p>5 Q. Now, the corporate counsel, were</p> <p>6 they previously counsel for the business,</p> <p>7 or they are new counsel that you have</p> <p>8 brought in?</p> <p>9 MR. MORRIS: Objection.</p> <p>10 A. They are new counsel to the</p> <p>11 business.</p> <p>12 Q. Let me ask a question. In the</p> <p>13 liquidation analysis, if a trustee was</p> <p>14 appointed, couldn't the trustee use</p> <p>15 Pachulski or corporate counsel to</p> <p>16 facilitate a sale?</p> <p>17 A. Couldn't they? I suppose they</p> <p>18 could. My experience is that they don't.</p> <p>19 I am not sure, if they got permission from</p> <p>20 the court, that they couldn't. But</p> <p>21 typically trustee counsel, in my</p> <p>22 experience, gets its own counsel separate</p> <p>23 from the Debtor's prior counsel. But I</p> <p>24 suppose they --</p> <p>25 Q. But what about transactional</p>	<p style="text-align: right;">Page 35</p> <p>1 J. SEERY</p> <p>2 counsel that had a knowledge of the</p> <p>3 business? Couldn't they use them to help</p> <p>4 facilitate the sale?</p> <p>5 A. Again, I suppose they could.</p> <p>6 They might need permission from the court.</p> <p>7 I have not seen that done that way before,</p> <p>8 but I suppose they could.</p> <p>9 Q. And in fact, in a liquidation,</p> <p>10 which you are doing for these businesses,</p> <p>11 a trustee could hire a third party who is</p> <p>12 as capable as you and others to facilitate</p> <p>13 the sale or arrange for the sale.</p> <p>14 Correct?</p> <p>15 A. Well, I take issue with your</p> <p>16 proposition that we are liquidating these</p> <p>17 assets and it is a liquidation. We are</p> <p>18 not -- plan analysis is not a liquidation</p> <p>19 analysis. The liquidation analysis is a</p> <p>20 liquidation analysis.</p> <p>21 Q. Let's not parse words. Your</p> <p>22 intention is to sell these assets on or</p> <p>23 before December 2022. Correct?</p> <p>24 A. Let's parse words. This is a</p> <p>25 deposition and you are specifically trying</p>
<p style="text-align: right;">Page 36</p> <p>1 J. SEERY</p> <p>2 to put certain things into a framework</p> <p>3 that you would like to use later. So, it</p> <p>4 is about parsing words.</p> <p>5 We have a plan that is a</p> <p>6 monetization plan. Your supposition is</p> <p>7 incorrect. We are going to manage these</p> <p>8 businesses and look for opportunities to</p> <p>9 monetize them when it is appropriate based</p> <p>10 upon how we look at the market, what the</p> <p>11 conditions are for each of the individual</p> <p>12 assets and the best way to do that within</p> <p>13 what we think is a reasonable time frame.</p> <p>14 That is very different than a liquidation.</p> <p>15 Q. Let me ask you a question. The</p> <p>16 assumption that is made in the plan</p> <p>17 analysis that you have here is that</p> <p>18 everything is sold by December of 2022.</p> <p>19 Correct?</p> <p>20 A. For the purposes of this</p> <p>21 projection and assumptions, yes.</p> <p>22 Q. Which one of the operating</p> <p>23 businesses that are here go into the trust</p> <p>24 versus those retained by the reorganized</p> <p>25 debtor?</p>	<p style="text-align: right;">Page 37</p> <p>1 J. SEERY</p> <p>2 A. I think any of the businesses</p> <p>3 that we can transfer into the trust, we</p> <p>4 will do so for ease of operation. There</p> <p>5 is no requirement that we have to transfer</p> <p>6 any particular ones into the trust.</p> <p>7 Q. So, which ones cannot be</p> <p>8 transferred into the trust?</p> <p>9 A. None of the businesses cannot be</p> <p>10 transferred into the trust. The question</p> <p>11 is with respect to underlying obligations</p> <p>12 at the business, if that transfer would</p> <p>13 trigger a change of control or some other</p> <p>14 change in the business either with respect</p> <p>15 to important contracts or financings, we</p> <p>16 wouldn't make the transfer without</p> <p>17 amending the agreements or putting new</p> <p>18 agreements in place.</p> <p>19 Q. So, is it your testimony that</p> <p>20 potentially these businesses could be</p> <p>21 owned and operated for 10 years?</p> <p>22 A. Potentially, yes.</p> <p>23 Q. Isn't there a limitation on the</p> <p>24 liquidation trust that you have in place</p> <p>25 as to its life?</p>

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2 A. I don't recall the specific

3 limitation on the trust. But if there was

4 a reason to hold on to the asset, if there

5 is a limitation, we can seek an extension.

6 Q. Let me ask a question. With

7 respect to these businesses, the Debtor

8 merely owns an equity interest in them.

9 Correct?

10 A. Which business?

11 Q. The ones you have identified as

12 operating businesses earlier?

13 A. It depends on the business.

14 Q. Well, let me -- again, let's try

15 to be specific. With respect to SSP, it

16 was your position that you did not need to

17 get court approval for the sale. Correct?

18 A. That's correct.

19 Q. Which one of the operating

20 businesses that are here, that you have

21 identified, do you need court authority

22 for a sale?

23 MR. MORRIS: Objection to the

24 form of the question.

25 A. Each of the businesses will be a

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2 or determined the discount that has been

3 placed between the two, plan analysis

4 versus liquidation analysis?

5 MR. MORRIS: Objection to form

6 of the question.

7 A. To which document are you

8 referring?

9 Q. Both the June -- the January and

10 the November analysis has a different

11 estimated proceeds for monetization for

12 the plan analysis versus the liquidation

13 analysis. Do you see that?

14 A. Yes.

15 Q. And there is a note under there.

16 "Assumes Chapter 7 trustee will not be

17 able to achieve the same sales proceeds as

18 Claimant trustee."

19 A. I see that, yes.

20 Q. Do you see that note?

21 A. Yes.

22 Q. Who arrived at that discount?

23 A. I did.

24 Q. What percentage did you use?

25 A. Depended on the asset. Each one

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2 different analysis that we'll undertake

3 with bankruptcy counsel to determine what

4 we would need depending on when it is

5 going to happen and what the restrictions

6 either under the code are or under the

7 plan.

8 Q. Is there anything that would

9 stop you from selling these businesses if

10 the Chapter 11 went on for a year or two

11 years?

12 MR. MORRIS: Objection to form

13 of the question.

14 A. Is there anything that would

15 stop me? We'd have to follow the

16 strictures of the code and the protocols,

17 but there would be no prohibition -- let

18 me finish, please.

19 There would be no prohibition

20 that I am aware of.

21 Q. Now, in connection with your

22 differential between the liquidation of

23 what I will call the operating businesses

24 under the liquidation analysis and the

25 plan analysis, who arrived at the discount

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2 is different.

3 Q. Is the discount a function of

4 capability of a trustee versus your

5 capability, or is the discount a function

6 of timing?

7 MR. MORRIS: Objection to form.

8 A. It could be a combination.

9 Q. So, let's -- let me walk through

10 this. Your plan analysis has an

11 assumption that everything is sold by

12 December 2022. Correct?

13 A. Correct.

14 Q. And the valuations that you have

15 used here for the monetization assume a

16 sale between -- a sale prior to December

17 of 2022. Correct?

18 A. Sorry. I don't quite understand

19 your question.

20 Q. The 257 number, and then let's

21 take out the notes. Let's use the 210

22 number.

23 MR. MORRIS: Can we put the

24 document back on the screen, please?

25 Sorry, Douglas, to interrupt, but it

<p style="text-align: right;">Page 42</p> <p>1 J. SEERY</p> <p>2 would be helpful.</p> <p>3 MR. DRAPER: That is fine, John.</p> <p>4 (Pause.)</p> <p>5 MR. MORRIS: Thank you very</p> <p>6 much.</p> <p>7 Q. Mr. Seery, do you see the 257?</p> <p>8 A. In the one from yesterday?</p> <p>9 Q. Yes.</p> <p>10 A. Second line, 257,941. Yes.</p> <p>11 Q. That assumes a monetization of</p> <p>12 all assets by December of 2022?</p> <p>13 A. Correct.</p> <p>14 Q. And so everything has been sold</p> <p>15 by that time; correct?</p> <p>16 A. Yes.</p> <p>17 Q. So, what I am trying to get at</p> <p>18 is, there is both the capability between</p> <p>19 you and a trustee, and then the second</p> <p>20 issue is timing. So, what discount was</p> <p>21 put on for timing, Mr. Seery, between when</p> <p>22 a trustee would sell it versus when you</p> <p>23 would sell it?</p> <p>24 MR. MORRIS: Objection.</p> <p>25 Q. What is the percentage you</p>	<p style="text-align: right;">Page 43</p> <p>1 J. SEERY</p> <p>2 applied?</p> <p>3 A. Each of the assets is different.</p> <p>4 Q. Is there a general discount that</p> <p>5 you used?</p> <p>6 A. Not a general discount, no. We</p> <p>7 looked at each individual asset and went</p> <p>8 through and made an assessment.</p> <p>9 Q. Did you apply a discount for</p> <p>10 your capability versus the capability of a</p> <p>11 trustee?</p> <p>12 A. No.</p> <p>13 Q. So a trustee would be as capable</p> <p>14 as you are in monetizing these assets?</p> <p>15 MR. MORRIS: Objection to the</p> <p>16 form of the question.</p> <p>17 Q. Excuse me? The answer is?</p> <p>18 A. The answer is maybe.</p> <p>19 Q. Couldn't a trustee hire somebody</p> <p>20 as capable as you are?</p> <p>21 MR. MORRIS: Objection to the</p> <p>22 form of the question.</p> <p>23 A. Perhaps.</p> <p>24 Q. Sir, that is a yes or no</p> <p>25 question. Could the trustee hire somebody</p>
<p style="text-align: right;">Page 44</p> <p>1 J. SEERY</p> <p>2 as capable as you are?</p> <p>3 MR. MORRIS: Objection to the</p> <p>4 form of the question.</p> <p>5 A. I don't know.</p> <p>6 Q. Is there anybody as capable as</p> <p>7 you are?</p> <p>8 MR. MORRIS: Objection to the</p> <p>9 form of the question.</p> <p>10 A. Certainly.</p> <p>11 Q. And they could be hired.</p> <p>12 Correct?</p> <p>13 A. Perhaps. I don't know.</p> <p>14 Q. And if you go back to the</p> <p>15 November 2020 liquidation analysis versus</p> <p>16 plan analysis, it is also the same note</p> <p>17 about that a trustee would bring less, and</p> <p>18 there is the same sort of discount between</p> <p>19 the estimated proceeds under the plan and</p> <p>20 under the liquidation analysis.</p> <p>21 MR. MORRIS: If that is a</p> <p>22 question, I object.</p> <p>23 Q. Is that correct, Mr. Seery,</p> <p>24 looking at the document?</p> <p>25 A. There are discounts, yes.</p>	<p style="text-align: right;">Page 45</p> <p>1 J. SEERY</p> <p>2 Q. Again, the discounts are applied</p> <p>3 for timing and capability?</p> <p>4 A. Yes.</p> <p>5 Q. Now, in looking at the November</p> <p>6 plan analysis number of \$190 million and</p> <p>7 the January number of \$257 million, what</p> <p>8 accounts for the increase between the two</p> <p>9 dates? What assets specifically?</p> <p>10 A. There are a number of assets.</p> <p>11 Firstly, the HCLOF assets are added.</p> <p>12 Q. How much are those?</p> <p>13 A. Approximately 22 and a half</p> <p>14 million dollars.</p> <p>15 Q. Okay.</p> <p>16 A. Secondly, there is a significant</p> <p>17 increase in the value of certain of the</p> <p>18 assets over this time period.</p> <p>19 Q. Which assets, Mr. Seery?</p> <p>20 A. There are a number. They</p> <p>21 include MGM stock, they include Trustway,</p> <p>22 they include Targa.</p> <p>23 Q. And what is the percentage</p> <p>24 increase from November to January,</p> <p>25 November of 2020 to January of 2021?</p>

<p style="text-align: right;">Page 46</p> <p>1 J. SEERY</p> <p>2 A. Do you mean what is the</p> <p>3 percentage increase from 190 to 257?</p> <p>4 Q. No. You just identified three</p> <p>5 assets. MGM stock, we can go look at the</p> <p>6 exchange and figure out what the price</p> <p>7 increase is; correct?</p> <p>8 A. No.</p> <p>9 Q. Why not? Is the MGM stock</p> <p>10 publicly traded?</p> <p>11 A. Yes. It doesn't trade on --</p> <p>12 Q. Excuse me?</p> <p>13 A. It doesn't trade on an exchange.</p> <p>14 Q. Is there a public market for the</p> <p>15 MGM stock that we could calculate the</p> <p>16 increase?</p> <p>17 A. There is a semipublic market;</p> <p>18 yes.</p> <p>19 Q. So it is a number that is</p> <p>20 readily available between the two dates?</p> <p>21 A. It's available.</p> <p>22 Q. Now, you identified Targa and</p> <p>23 Trustway. Correct?</p> <p>24 A. Yes.</p> <p>25 Q. Those are not readily available</p>	<p style="text-align: right;">Page 47</p> <p>1 J. SEERY</p> <p>2 markets; correct?</p> <p>3 A. No.</p> <p>4 Q. Those are operating businesses?</p> <p>5 A. Correct.</p> <p>6 Q. Who provided the valuation for</p> <p>7 the November 2020 liquidation analysis?</p> <p>8 A. We use a combination of the</p> <p>9 value that we get from Houlihan Lokey for</p> <p>10 mark purposes and then we adjust it for</p> <p>11 plan purposes.</p> <p>12 Q. And the adjustment was up or</p> <p>13 down?</p> <p>14 A. When?</p> <p>15 Q. For both November and January.</p> <p>16 You got a number from Houlihan Lokey. You</p> <p>17 adjusted it. Did you adjust it up or did</p> <p>18 you adjust it down?</p> <p>19 MR. MORRIS: Objection to form</p> <p>20 of the question.</p> <p>21 A. I believe that for November we</p> <p>22 adjusted it down, and for January we</p> <p>23 adjusted it down. I don't recall off the</p> <p>24 top of my head but I believe both of them</p> <p>25 were adjusted down.</p>
<p style="text-align: right;">Page 48</p> <p>1 J. SEERY</p> <p>2 Q. And if I understand what you</p> <p>3 just said, it is that the Houlihan Lokey</p> <p>4 valuation for those two businesses showed</p> <p>5 a significant increase between November of</p> <p>6 2020 and January of 2021?</p> <p>7 MR. MORRIS: Objection to form</p> <p>8 of the question.</p> <p>9 A. I didn't say that.</p> <p>10 Q. I am trying to account for the</p> <p>11 increase between the two dates, and you</p> <p>12 identified three assets. You identified</p> <p>13 MGM stock, which has, I can guess, as you</p> <p>14 have said, a readily ascertainable value.</p> <p>15 Then you identified two others that the</p> <p>16 valuation is based upon something Houlihan</p> <p>17 Lokey provided you. Correct?</p> <p>18 A. I gave you three examples. I</p> <p>19 never said "readily." That is your word,</p> <p>20 not mine. And I didn't say that Houlihan</p> <p>21 had a significant change in their</p> <p>22 valuation.</p> <p>23 Q. So let's now go back to the</p> <p>24 question. There is an increase in value</p> <p>25 from November 24th of 2020 to January 28th</p>	<p style="text-align: right;">Page 49</p> <p>1 J. SEERY</p> <p>2 of 2021, the magnitude being roughly 60</p> <p>3 some odd million dollars. Correct?</p> <p>4 A. Correct.</p> <p>5 Q. We can account for \$22 million</p> <p>6 of it easily, right?</p> <p>7 MR. MORRIS: Objection to form.</p> <p>8 A. Correct.</p> <p>9 Q. That is the HarbourVest</p> <p>10 settlement, so that leaves roughly</p> <p>11 \$40 million unaccounted for?</p> <p>12 MR. MORRIS: Objection to the</p> <p>13 form of the question if that is a</p> <p>14 question. It is accounted for.</p> <p>15 Q. What makes up that difference,</p> <p>16 Mr. Seery?</p> <p>17 A. A change in the plan value of</p> <p>18 the assets.</p> <p>19 Q. Okay. Which assets? Let's sort</p> <p>20 of go back to where we were.</p> <p>21 A. There are numerous assets in the</p> <p>22 plan formulation. I gave you three</p> <p>23 examples of the operating businesses. The</p> <p>24 securities, I believe, have increased in</p> <p>25 value since the plan, so those would go up</p>

<p style="text-align: right;">Page 50</p> <p>1 J. SEERY</p> <p>2 for one. On the operating businesses, we</p> <p>3 looked at each of them and made an</p> <p>4 assessment based upon where the market is</p> <p>5 and what we believe the values are, and we</p> <p>6 have moved those valuations.</p> <p>7 Q. Let me look at some numbers</p> <p>8 again. In the liquidation analysis in</p> <p>9 November of 2020, the liquidation value is</p> <p>10 \$149 million. Correct?</p> <p>11 A. Yes.</p> <p>12 Q. And in the liquidation analysis</p> <p>13 in January of 2021, you have \$191 million?</p> <p>14 A. Yes.</p> <p>15 Q. You see that number. So there</p> <p>16 is \$51 million there, right?</p> <p>17 A. No.</p> <p>18 Q. What is the difference between</p> <p>19 191 and -- sorry. My math may be a little</p> <p>20 off. What is the difference between the</p> <p>21 two numbers, Mr. Seery?</p> <p>22 A. Your math is off.</p> <p>23 Q. Sorry. It is 41 million?</p> <p>24 A. Correct.</p> <p>25 Q. \$22 million of that is the</p>	<p style="text-align: right;">Page 51</p> <p>1 J. SEERY</p> <p>2 HarbourVest settlement, right?</p> <p>3 A. I believe that's correct.</p> <p>4 Q. Is that fair, Mr. Seery?</p> <p>5 A. I believe that is correct, yes.</p> <p>6 Q. And part of that differential</p> <p>7 are publicly traded or ascertainable</p> <p>8 securities. Correct?</p> <p>9 A. Yes.</p> <p>10 Q. And basically you can get, or</p> <p>11 under the plan analysis or trustee</p> <p>12 analysis, if it is a marketable security</p> <p>13 or where there is a market, the</p> <p>14 liquidation number should be the same for</p> <p>15 both. Is that fair?</p> <p>16 A. No.</p> <p>17 Q. And why not?</p> <p>18 A. We might have a different price</p> <p>19 target for a particular security than the</p> <p>20 current trading value.</p> <p>21 Q. I understand that, but I mean</p> <p>22 that is based upon the capability of the</p> <p>23 person making the decision as to when to</p> <p>24 sell. Correct?</p> <p>25 MR. MORRIS: Objection to form</p>
<p style="text-align: right;">Page 52</p> <p>1 J. SEERY</p> <p>2 of the question.</p> <p>3 Q. Mr. Seery, yes or no?</p> <p>4 A. I said no.</p> <p>5 Q. What is that based on, then?</p> <p>6 A. The person's ability to assess</p> <p>7 the market and timing.</p> <p>8 Q. Okay. And again, couldn't a</p> <p>9 trustee hire somebody as capable as you to</p> <p>10 both, A, assess the market and, B, make a</p> <p>11 determination as to when to sell?</p> <p>12 MR. MORRIS: Objection to form</p> <p>13 of the question.</p> <p>14 A. I suppose a trustee could.</p> <p>15 Q. And there are better people or</p> <p>16 people equally or better than you at</p> <p>17 assessing a market. Correct?</p> <p>18 A. Yes.</p> <p>19 MR. MORRIS: Objection to form</p> <p>20 of the question.</p> <p>21 Q. So, again, let's go back to</p> <p>22 that. We have accounted for, out of</p> <p>23 \$41 million where the liquidation analysis</p> <p>24 increases between the two dates,</p> <p>25 \$22 million of it. That leaves</p>	<p style="text-align: right;">Page 53</p> <p>1 J. SEERY</p> <p>2 \$18 million. How much of that is publicly</p> <p>3 traded or ascertainable assets versus</p> <p>4 operating businesses?</p> <p>5 A. I don't know off the top of my</p> <p>6 head the percentages.</p> <p>7 Q. All right. The same question</p> <p>8 for the plan analysis where you have the</p> <p>9 differential between the November number</p> <p>10 and the January number. How much of it is</p> <p>11 marketable securities versus an operating</p> <p>12 business?</p> <p>13 A. I don't recall off the top of my</p> <p>14 head.</p> <p>15 MR. DRAPER: Let me take a</p> <p>16 few-minute break. Can we take a</p> <p>17 ten-minute break here?</p> <p>18 THE WITNESS: Sure.</p> <p>19 (Recess.)</p> <p>20 BY MR. DRAPER:</p> <p>21 Q. Mr. Seery, what I am going to</p> <p>22 show you and what I would ask you to look</p> <p>23 at is in the note E, in the statement of</p> <p>24 assumptions for the November 2020</p> <p>25 disclosure statement. It discusses fixed</p>

Page 54	Page 55
<p>1 J. SEERY</p> <p>2 assets. Do you see that note?</p> <p>3 A. Yes.</p> <p>4 Q. It says, "Fixed assets used in</p> <p>5 the daily business operations are sold in</p> <p>6 February of 2021."</p> <p>7 In your November monetization,</p> <p>8 did the fixed assets account for any funds</p> <p>9 if you know?</p> <p>10 A. It was a minimal amount. I</p> <p>11 don't recall the specific amount. It was</p> <p>12 either 100,000 or a million or some</p> <p>13 nominal amount of money.</p> <p>14 Q. Well, there is a big difference</p> <p>15 between a hundred thousand and a million</p> <p>16 dollars. Do you recall what it is?</p> <p>17 A. Yes. It is a million. The</p> <p>18 difference between zero and a million.</p> <p>19 Yes.</p> <p>20 Q. And now in the January 2021</p> <p>21 analysis you have them sold in June of</p> <p>22 2021 for zero dollars?</p> <p>23 A. Correct.</p> <p>24 Q. See note E for the January 2021</p> <p>25 document, the statement of assumptions?</p>	<p>1 J. SEERY</p> <p>2 A. I see it, yes.</p> <p>3 Q. What accounts for both the</p> <p>4 timing difference and the determination</p> <p>5 that they will generate no money?</p> <p>6 A. The determination was that -- in</p> <p>7 November, was that it would generate a</p> <p>8 nominal amount of money. I don't recall,</p> <p>9 as I said, if it was \$100,000 or a million</p> <p>10 dollars. We assumed they will be</p> <p>11 transferred for zero dollars. These are</p> <p>12 the fixed assets used in the business.</p> <p>13 Q. What about the timing issue, the</p> <p>14 difference between February...</p> <p>15 A. The difference between February</p> <p>16 and June?</p> <p>17 Q. Yes.</p> <p>18 A. The four months.</p> <p>19 Q. No, I understand that. What</p> <p>20 accounts for the timing difference?</p> <p>21 A. The plan has been pushed back,</p> <p>22 the start date.</p> <p>23 Q. And what is the new start date?</p> <p>24 A. March 1st.</p> <p>25 Q. You have made a decision that</p>
Page 56	Page 57
<p>1 J. SEERY</p> <p>2 there has been a change in the Debtor's</p> <p>3 business ongoing and it is reflected in</p> <p>4 the number of people you are going to keep</p> <p>5 and how long you are going to provide</p> <p>6 management services and advisory services</p> <p>7 for certain CLOs. Correct?</p> <p>8 MR. MORRIS: Objection to form</p> <p>9 of the question.</p> <p>10 A. That is partially correct.</p> <p>11 Q. To address that -- and I think</p> <p>12 you were asked this the other day. In</p> <p>13 your November 2020 cash flow your</p> <p>14 management fees shut off after March of</p> <p>15 2021. Correct?</p> <p>16 A. I don't recall the specific</p> <p>17 date, but they did shut off, yes.</p> <p>18 Q. Now, in the new report, those</p> <p>19 fees don't shut off. Correct?</p> <p>20 A. That's correct.</p> <p>21 Q. What I would ask you to do --</p> <p>22 you will have to educate me now -- is look</p> <p>23 at the January 2021 cash flow that you</p> <p>24 have. I think it starts on -- I don't</p> <p>25 know what page. It looks like page 3 of</p>	<p>1 J. SEERY</p> <p>2 4, a profit and loss statement for</p> <p>3 Highland Capital Management LP?</p> <p>4 MR. MORRIS: Can we get that on</p> <p>5 the screen?</p> <p>6 Q. The page starts "Actual</p> <p>7 January 2020" and then goes on.</p> <p>8 Mr. Seery, can you explain to</p> <p>9 me, in looking at this document, what</p> <p>10 revenue you will generate by the change in</p> <p>11 your determination to keep a business or</p> <p>12 things going?</p> <p>13 MR. MORRIS: Objection to the</p> <p>14 form of the question. Is this the</p> <p>15 right page, Douglas?</p> <p>16 MR. DRAPER: It is the start of</p> <p>17 it, yes. I have asked him to look at</p> <p>18 the document. I need him to explain</p> <p>19 to me. I am trying to understand it.</p> <p>20 MR. MORRIS: It is fine. I want</p> <p>21 to make sure we are all on the same</p> <p>22 page, literally.</p> <p>23 A. I am not sure what you are</p> <p>24 asking, but the management fee line at the</p> <p>25 top is the revenue line. That shows</p>

<p>Page 58</p> <p>1 J. SEERY</p> <p>2 revenue for management fees, shared</p> <p>3 service fees and other income. Different</p> <p>4 from that is the management fee line.</p> <p>5 Q. So my question is, what is the</p> <p>6 new revenue that is generated between now</p> <p>7 and December of 2022?</p> <p>8 A. Between now and December 2021 is</p> <p>9 3.897 million. Between now and</p> <p>10 December 22nd, if you go to the next page,</p> <p>11 is 6.215 million.</p> <p>12 Q. And what is the cost that you</p> <p>13 are showing to generate that revenue?</p> <p>14 What is the incremental cost?</p> <p>15 A. Incremental to what?</p> <p>16 Q. Well, you are going to generate</p> <p>17 \$6.2 million. Correct?</p> <p>18 A. Correct.</p> <p>19 Q. That doesn't come in without</p> <p>20 some cost attributable to it, true?</p> <p>21 A. The management fee line will</p> <p>22 generate \$6.2 million in revenue. The</p> <p>23 total --</p> <p>24 Q. I understand that. I understand</p> <p>25 the revenue side. That is the --</p>	<p>Page 59</p> <p>1 J. SEERY</p> <p>2 A. Hold on. Mr. Draper, let's be</p> <p>3 precise about things. You just said the</p> <p>4 revenue will be 6.2. That is not true.</p> <p>5 The revenue is 8.269. The management fee</p> <p>6 revenue is 6.2.</p> <p>7 Q. All right. So the total revenue</p> <p>8 from your change is \$8.2 million.</p> <p>9 Correct?</p> <p>10 A. No.</p> <p>11 MR. MORRIS: Objection to form</p> <p>12 of the question.</p> <p>13 Q. That is why I am asking you to</p> <p>14 explain the document to me, Mr. Seery.</p> <p>15 How much additional revenue will you</p> <p>16 generate from your change in plans from</p> <p>17 November of 2020 to January of 2021? I am</p> <p>18 not asking for the revenue you generate</p> <p>19 during that period. But you have made a</p> <p>20 change in what the business -- what you</p> <p>21 are going to do going forward to generate</p> <p>22 this \$8.269 million. Correct?</p> <p>23 A. Correct.</p> <p>24 Q. Now, tell me what the cost of</p> <p>25 generating the \$8.269 million is.</p>
<p>Page 60</p> <p>1 J. SEERY</p> <p>2 A. The total costs are the</p> <p>3 operating expenses. Those are</p> <p>4 \$38 million.</p> <p>5 Q. Okay. But in that \$38 million</p> <p>6 there is professional fees for Pachulski.</p> <p>7 There are other costs, correct? What of</p> <p>8 the \$38 million in costs are attributable</p> <p>9 to the change in business going forward?</p> <p>10 MR. MORRIS: Objection to the</p> <p>11 form of the question.</p> <p>12 A. I don't understand what you are</p> <p>13 asking. Maybe I could explain the model</p> <p>14 to you just generally, or you could ask me</p> <p>15 a question that makes sense.</p> <p>16 Q. I am sorry for asking you</p> <p>17 questions that don't make sense for two</p> <p>18 hours. I apologize for that.</p> <p>19 A. You are putting in "change" and</p> <p>20 then you have only one thing up on the</p> <p>21 screen. Are you trying to trick me, or</p> <p>22 are you trying to learn what is in the</p> <p>23 model?</p> <p>24 Q. I am trying to learn what is on</p> <p>25 the model.</p>	<p>Page 61</p> <p>1 J. SEERY</p> <p>2 A. Then let's put the two pieces up</p> <p>3 next to each other and then we can do a</p> <p>4 comparison.</p> <p>5 Q. Let's do a comparison.</p> <p>6 Mr. Seery, take your</p> <p>7 January 2021 document and tell me where</p> <p>8 the costs are on that document associated</p> <p>9 with generating the \$8.269 million other</p> <p>10 than professional fees that were</p> <p>11 previously in your November model. What</p> <p>12 are the new costs that are attributable to</p> <p>13 generating the \$8.269 million?</p> <p>14 A. Now, the previous total</p> <p>15 revenue -- I think we have only one piece</p> <p>16 of that up from the last one through '21.</p> <p>17 I don't see the '22 piece from your prior</p> <p>18 document. So if you are looking at just</p> <p>19 the management fee line, the management</p> <p>20 fee line is increased by the revenues from</p> <p>21 the CLOs, and that basically all of that</p> <p>22 difference is from the CLOs.</p> <p>23 Q. I got that part. I am looking</p> <p>24 at the expense side of the ledger. What</p> <p>25 is it going to cost you to generate solely</p>

<p style="text-align: right;">Page 62</p> <p>1 J. SEERY</p> <p>2 the \$8.269 million? What on this sheet</p> <p>3 tells me what those costs are?</p> <p>4 MR. MORRIS: Objection to form.</p> <p>5 Q. Or on some other page on this</p> <p>6 sheet, so that I am not tricking you.</p> <p>7 Look at the whole document and tell me</p> <p>8 where those costs are.</p> <p>9 A. They are in the total expense</p> <p>10 line.</p> <p>11 Q. All right. Let's sort of parse</p> <p>12 our way through this a little, so possibly</p> <p>13 again this may give you some assistance.</p> <p>14 If you look at the assumptions</p> <p>15 that you made, and let me get this in</p> <p>16 front of you.</p> <p>17 A. I am working off the document.</p> <p>18 I can see the whole document because</p> <p>19 Mr. Morris forwarded it to me. I am</p> <p>20 working off that document because the Zoom</p> <p>21 document is too blurry.</p> <p>22 Q. If I remember correctly, there</p> <p>23 is a note, and I am trying to find it, in</p> <p>24 the January 2021 document that says you</p> <p>25 are going to keep ten people. Do you</p>	<p style="text-align: right;">Page 63</p> <p>1 J. SEERY</p> <p>2 recall that?</p> <p>3 A. That's about the right number.</p> <p>4 If you can point me to the note that would</p> <p>5 be helpful.</p> <p>6 Q. I am trying to find it. And in</p> <p>7 the prior document in November you said</p> <p>8 you were going to keep three people.</p> <p>9 A. I don't see it in front of me,</p> <p>10 but if that is what you represent, I think</p> <p>11 that that was a base assumption, yes.</p> <p>12 Q. So what I am trying to get at</p> <p>13 is, to generate the \$8.6 million that you</p> <p>14 were previously not going to get in</p> <p>15 November of 2020, what is the cost to</p> <p>16 generate the \$8.6 million? What on this</p> <p>17 sheet in January 2021 tells me that cost?</p> <p>18 A. Again, it is --</p> <p>19 Q. And I am only focusing on --</p> <p>20 A. It is the \$6.2 million.</p> <p>21 Q. No, I am focusing on what you</p> <p>22 pointed out is 8 point something million</p> <p>23 dollars?</p> <p>24 A. That is the total amount.</p> <p>25 Before you were asking me for the</p>
<p style="text-align: right;">Page 64</p> <p>1 J. SEERY</p> <p>2 difference.</p> <p>3 Q. No, I am not, Mr. Seery. I am</p> <p>4 asking you for the cost side of the</p> <p>5 ledger. What on this document tells me</p> <p>6 the costs to generate that additional</p> <p>7 income?</p> <p>8 A. The operating expenses.</p> <p>9 Q. So you are telling me that it is</p> <p>10 beneficial to spend \$30 million to</p> <p>11 generate an additional \$8 million of</p> <p>12 revenue?</p> <p>13 A. That is not what you are asking</p> <p>14 me.</p> <p>15 MR. MORRIS: Objection to form.</p> <p>16 Q. Let's start all over again. We</p> <p>17 now know that your item in January of 2021</p> <p>18 shows \$8.2 million of additional revenue</p> <p>19 that was not reflected on the November</p> <p>20 document. Correct?</p> <p>21 A. Incorrect.</p> <p>22 Q. All that revenue is reflected in</p> <p>23 the November document?</p> <p>24 A. No, it is not.</p> <p>25 Q. What additional revenue is</p>	<p style="text-align: right;">Page 65</p> <p>1 J. SEERY</p> <p>2 reflected in January that was not</p> <p>3 reflected in November for this change of</p> <p>4 managing the CLOs and for the shared</p> <p>5 services or whatever? The revenue items</p> <p>6 that are now in January that were not in</p> <p>7 November.</p> <p>8 I realize you are exasperated</p> <p>9 and so am I, so let's sort of try to work</p> <p>10 our way through this.</p> <p>11 A. I will object to the form.</p> <p>12 There is about eleven questions there.</p> <p>13 MR. MORRIS: Thank you.</p> <p>14 Q. No, there are comments. Let's</p> <p>15 sort of get to where we get to so I</p> <p>16 understand this.</p> <p>17 Please explain to me what the</p> <p>18 cost is for generating the \$8.2 million.</p> <p>19 If your answer is it is going to cost you</p> <p>20 \$30 million to do it, fine; that's your</p> <p>21 answer.</p> <p>22 A. The total expenses to generate</p> <p>23 the total 8.2 are \$38,849,000.</p> <p>24 Q. Okay.</p> <p>25 A. Those are the operating</p>

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<p>1 J. SEERY</p> <p>2 expenses.</p> <p>3 Q. That would not be incurred but</p> <p>4 for keeping these services available and</p> <p>5 managing the CLOs?</p> <p>6 A. That is not what I said. Is</p> <p>7 that a question?</p> <p>8 Q. I am trying to understand what</p> <p>9 you said. I am trying to get to -- just</p> <p>10 understand. If you focus on that revenue</p> <p>11 generation, the \$8.2 million, what are</p> <p>12 your costs associated with that?</p> <p>13 MR. MORRIS: Objection. Asked</p> <p>14 and answered.</p> <p>15 Q. Just that piece.</p> <p>16 MR. MORRIS: Objection.</p> <p>17 A. \$38,249,000.</p> <p>18 MR. MORRIS: Which he said now</p> <p>19 about three, four or five times. It</p> <p>20 has been answered. You actually said,</p> <p>21 "If that's your answer, it's okay."</p> <p>22 He actually said that answer and yet</p> <p>23 you persist.</p> <p>24 MR. DRAPER: That is fine. I</p> <p>25 will let him stand with that answer.</p>	<p>1 J. SEERY</p> <p>2 Q. Let me walk you to page 28 of</p> <p>3 your disclosure statement and try to</p> <p>4 understand what you are saying here and</p> <p>5 try to parse some numbers into that. This</p> <p>6 is the November disclosure statement.</p> <p>7 MR. DRAPER: Page 28.</p> <p>8 Q. Let me read you the statement</p> <p>9 while it is coming up on the screen. What</p> <p>10 you are trying to address here is the drop</p> <p>11 in value of the assets of the Debtor from</p> <p>12 when it started to this date, and you say,</p> <p>13 "The drop in value of the Debtor's assets</p> <p>14 and assets under management was caused in</p> <p>15 part by COVID-19 global pandemic.</p> <p>16 Specifically the decline was the result</p> <p>17 of, among other things, the drop in value</p> <p>18 of the Debtor's assets generally, the loss</p> <p>19 in value in the prime accounts discussed</p> <p>20 below, the professional and other costs</p> <p>21 associated with Chapter 11 case and the</p> <p>22 reserve of approximately \$59 million</p> <p>23 against a loan receivable listed as an</p> <p>24 asset."</p> <p>25 So, what I can glean from this</p>
Page 68	Page 69
<p>1 J. SEERY</p> <p>2 is the \$59 million reserve is the Hunter</p> <p>3 Mountain receivable. Correct?</p> <p>4 A. Yes.</p> <p>5 Q. And a portion of it, I gather</p> <p>6 \$30 million, is the Jefferies margin call.</p> <p>7 Is that also correct?</p> <p>8 A. Well, a portion of it would be</p> <p>9 the paydown of the Jefferies margin loan</p> <p>10 in the internal account, which was about</p> <p>11 \$30 million.</p> <p>12 Q. Right. So, that both reduced</p> <p>13 the assets and reduced the liabilities;</p> <p>14 correct?</p> <p>15 A. It would reduce both -- I don't</p> <p>16 know if the liabilities are listed there.</p> <p>17 I am only seeing assets.</p> <p>18 Q. I understand that. But when you</p> <p>19 make a paydown it reduces both sides of</p> <p>20 the ledger?</p> <p>21 A. It would if they were</p> <p>22 incorporated, yes. I am only -- you are</p> <p>23 only showing me assets.</p> <p>24 Q. I understand that. Now, I</p> <p>25 gather the rest of the loss of value is a</p>	<p>1 J. SEERY</p> <p>2 function of COVID-19?</p> <p>3 A. COVID-19 is an overall overlay,</p> <p>4 but there is very specific reasons that</p> <p>5 value was lost.</p> <p>6 Q. Can you identify them for me and</p> <p>7 in which businesses?</p> <p>8 A. Sure. Approximately 58 million,</p> <p>9 as we talked about, was related to the</p> <p>10 Hunter Mountain note. This is a tax</p> <p>11 scheme note that we don't know if it is</p> <p>12 collectible and we don't know if it might</p> <p>13 lead to some kind of tax fraud liability.</p> <p>14 Fifty-four million was the</p> <p>15 equity lost by Mr. Dondero's trading in</p> <p>16 the select equity account. He lost</p> <p>17 \$54 million in that account.</p> <p>18 Thirty-six, roughly -- maybe</p> <p>19 that is through December, but 35 or</p> <p>20 \$36 million were the costs through this</p> <p>21 period, right in that neighborhood to my</p> <p>22 recollection.</p> <p>23 About 30 million was the</p> <p>24 aforementioned Jefferies loan in the</p> <p>25 internal account, which was the margin</p>

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<p>1 J. SEERY</p> <p>2 loan that had to be paid down due to</p> <p>3 margin calls. Again, disastrous trading</p> <p>4 by Mr. Dondero. In addition, he lost</p> <p>5 \$25 million in equity in that account.</p> <p>6 For those playing at home, that is close</p> <p>7 to \$100 million.</p> <p>8 Ten million --</p> <p>9 Q. So --</p> <p>10 A. I am not done. \$10 million</p> <p>11 approximately lost in the Carey Limousine</p> <p>12 loan. That was primarily just COVID</p> <p>13 driven. And about \$7 million lost in a</p> <p>14 position called NexPoint Hospitality</p> <p>15 Trust. This is a -- it's -- it's even</p> <p>16 hard to explain it out loud and not sound</p> <p>17 humorous.</p> <p>18 It's a highly levered U.S.</p> <p>19 hospitality REIT that Mr. Dondero put</p> <p>20 together that was listed on the TSX, has</p> <p>21 no liquidity and may be worth zero. I</p> <p>22 think that's about 225 million, roughly,</p> <p>23 which I think equals the delta between the</p> <p>24 two columns.</p> <p>25 Q. The trades you talked about</p>	<p>1 J. SEERY</p> <p>2 where a loss took place, what is the date</p> <p>3 for those trades?</p> <p>4 A. They are from the petition date</p> <p>5 to approximately mid-March when Jefferies</p> <p>6 seized the select account and I took over</p> <p>7 the internal account.</p> <p>8 Q. No, I am not talking about the</p> <p>9 Jefferies issue. I am talking about the</p> <p>10 Dondero trades that you referenced before.</p> <p>11 Those were made between the petition date</p> <p>12 and March?</p> <p>13 A. The losses in the account were</p> <p>14 generated between the petition date and</p> <p>15 March, yes.</p> <p>16 Q. You were talking about some</p> <p>17 trades Mr. Dondero made. What I am trying</p> <p>18 to ascertain --</p> <p>19 A. The trading in the account.</p> <p>20 Q. Okay. He had sole control over</p> <p>21 those accounts for that period?</p> <p>22 A. Yes. Well, he had sole -- sole</p> <p>23 control is different. He had portfolio</p> <p>24 management responsibility.</p> <p>25 Q. And you have seen direct</p>
Page 72	Page 73
<p>1 J. SEERY</p> <p>2 instruction from him to make those trades</p> <p>3 that were detrimental?</p> <p>4 A. He didn't meet the margin calls.</p> <p>5 He laid out a completely margined account.</p> <p>6 He refused to meet it. He had personal</p> <p>7 discussions with Steve Handler, the</p> <p>8 president of Jefferies, begging him to</p> <p>9 extend additional margin. He thought he</p> <p>10 had the ability to keep doing that.</p> <p>11 Unfortunately, Jefferies did not think the</p> <p>12 same thing.</p> <p>13 Q. But the --</p> <p>14 A. He --</p> <p>15 (Inaudible cross-talk.)</p> <p>16 Q. Let me go back. The Jefferies</p> <p>17 issue both reduced the assets of the</p> <p>18 Debtor but also reduced the liabilities of</p> <p>19 the Debtor to Jefferies. Correct?</p> <p>20 A. It would, yes.</p> <p>21 Q. Has any D&O claim been made by</p> <p>22 the Debtor with respect to officers and</p> <p>23 directors of the Debtor?</p> <p>24 MR. MORRIS: Objection to the</p> <p>25 form of the question.</p>	<p>1 J. SEERY</p> <p>2 A. Not yet, no.</p> <p>3 (Reporter interruption.)</p> <p>4 Q. There has been?</p> <p>5 A. Not yet, no.</p> <p>6 MR. DRAPER: I think Mr. Morris</p> <p>7 said yes.</p> <p>8 MR. MORRIS: Yes, in response to</p> <p>9 the court reporter's question as to</p> <p>10 whether or not there was an objection.</p> <p>11 Q. Mr. Seery, have you looked to</p> <p>12 see whether the policies that are in place</p> <p>13 are claims-made policies?</p> <p>14 MR. MORRIS: Objection to the</p> <p>15 form of the question.</p> <p>16 A. In connection with?</p> <p>17 Q. Directors and officers claims.</p> <p>18 A. We have looked at the policy,</p> <p>19 yes.</p> <p>20 Q. Do you know if they are claims</p> <p>21 made or some other type of policy?</p> <p>22 MR. MORRIS: Objection to the</p> <p>23 form of the question.</p> <p>24 A. Which policy?</p> <p>25 Q. The directors and officers</p>

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<p>1 J. SEERY</p> <p>2 policies. Are there one or more?</p> <p>3 A. There is more.</p> <p>4 Q. Are they all claims made, or are</p> <p>5 they all different types of policies?</p> <p>6 A. I believe they are different</p> <p>7 types. Each one is slightly different.</p> <p>8 MR. DRAPER: I think I have</p> <p>9 nothing further. Let me, for purposes</p> <p>10 of the record, be clear on the</p> <p>11 documents that are introduced and the</p> <p>12 document numbers.</p> <p>13 Document 1 is the January 2021</p> <p>14 material that we received. I think it</p> <p>15 is ten pages in length.</p> <p>16 I think Document 2 is the</p> <p>17 disclosure statement. I believe that</p> <p>18 is Exhibit 2. I don't think I used</p> <p>19 anything else looking at my notes.</p> <p>20 Let me introduce as Document 3</p> <p>21 my Notice of Deposition, which I have</p> <p>22 not introduced but Mr. Seery</p> <p>23 identified, and I will pass the</p> <p>24 witness.</p> <p>25 (So marked for identification as</p>	<p>1 J. SEERY</p> <p>2 Seery DYD Exhibit 3.)</p> <p>3 EXAMINATION BY</p> <p>4 MR. TAYLOR:</p> <p>5 Q. Mr. Seery, my name is Clay</p> <p>6 Taylor. I represent Mr. Dondero in this</p> <p>7 matter. I appreciate your time this</p> <p>8 morning. I will attempt to be brief. And</p> <p>9 I will also attempt to not cover ground</p> <p>10 that has already been covered but, of</p> <p>11 course, I do indeed have an outline and</p> <p>12 Mr. Draper kind of cut and pasted a lot of</p> <p>13 mine so it is a little cut up. I will</p> <p>14 attempt to keep a flow of questioning so</p> <p>15 we can make this brief.</p> <p>16 If you don't understand</p> <p>17 anything, of course, ask me to repeat it</p> <p>18 and I will do my best to do so.</p> <p>19 Let's, first of all, just talk</p> <p>20 about when I say liquidation analysis, we</p> <p>21 are going to be talking about both of</p> <p>22 them, just like you did with Mr. Draper.</p> <p>23 I will use the nomenclature the</p> <p>24 "disclosure statement analysis" and then</p> <p>25 the "updated liquidation analysis" to</p>
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<p>1 J. SEERY</p> <p>2 differentiate between the November and the</p> <p>3 recently produced, last night, updated</p> <p>4 financials or liquidation analysis. Is</p> <p>5 that clear to you?</p> <p>6 A. It would be easier if we just</p> <p>7 used "November" and "January."</p> <p>8 Q. Okay. I will attempt to use</p> <p>9 that.</p> <p>10 A. Thank you.</p> <p>11 Q. I believe you testified that</p> <p>12 both the November and January liquidation</p> <p>13 analysis was prepared for you by DSI, and</p> <p>14 you and the legal team reviewed it before</p> <p>15 it was published. Is that correct?</p> <p>16 A. At my direction. I think that's</p> <p>17 close to correct. But, yes, we did review</p> <p>18 it before it was published and I was</p> <p>19 involved in the actual production of it.</p> <p>20 Q. I believe you have testified</p> <p>21 that there are indeed roll-ups behind</p> <p>22 these documents. Is that correct?</p> <p>23 A. That's correct, yes.</p> <p>24 Q. Who provided the assumptions</p> <p>25 that were used in both analyses?</p>	<p>1 J. SEERY</p> <p>2 A. I did.</p> <p>3 MR. MORRIS: Objection to form</p> <p>4 of the question.</p> <p>5 Q. What is an assumption for</p> <p>6 purposes of an expert report or analysis?</p> <p>7 MR. MORRIS: Objection to the</p> <p>8 form of the question.</p> <p>9 A. For purposes of this disclosure</p> <p>10 statement, these are certain of the bases</p> <p>11 that we assume in order to put forth our</p> <p>12 projections. They are just that. They</p> <p>13 set a base --</p> <p>14 Q. Sorry.</p> <p>15 MR. TAYLOR: Mr. Draper, I</p> <p>16 believe you were trying to say</p> <p>17 something? Were you trying to make an</p> <p>18 objection?</p> <p>19 MR. DRAPER: Sorry. I thought I</p> <p>20 had it on mute. I apologize.</p> <p>21 MR. MORRIS: We have interrupted</p> <p>22 the witness now.</p> <p>23 (Record read.)</p> <p>24 THE WITNESS: They set a base</p> <p>25 that we rely on in order to project</p>

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2 the performance of the company for the

3 two years following exit.

4 Q. And the financial projections

5 that are used in both the November and

6 January liquidation analysis are

7 projections that are made jointly by you

8 and the DSI team. Correct?

9 MR. MORRIS: Objection to the

10 form of the question. It is presented

11 by the Debtor.

12 A. In the liquidation analysis we

13 don't -- we use a model up to a particular

14 point and then we liquidate it. So the

15 projections which go forward for the

16 period really apply more to the plan

17 analysis. There are certain assumptions

18 that are different for the liquidation

19 than they are for the plan. Among the

20 most obvious is that the plan goes out

21 while the liquidation does not.

22 MR. TAYLOR: Bryan, could you go

23 ahead and pull up the November

24 liquidation analysis, the very first

25 page, the disclaimers.

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1 J. SEERY

2 subjective judgment and analysis.

3 Correct?

4 MR. MORRIS: Objection to form.

5 A. That is what it says, yes.

6 Q. Well, would you agree with what

7 it says?

8 A. Yes, I do.

9 Q. Would you agree that they may or

10 may not prove to be accurate or correct?

11 A. That is correct, yes.

12 Q. And it not only states that, but

13 you believe that to be true. Correct?

14 A. Yes.

15 Q. You also agree with the next

16 statement that "there can be no assurance

17 that these statements, estimates and

18 forecasts will be attained." Correct?

19 A. A weird statement there. You

20 fell apart at the end of your question.

21 Q. Sorry about that.

22 Would you agree with the

23 statement that "there can be no assurance

24 that these statements, estimates and

25 forecasts will be attained"?

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2 THE WITNESS: Is this the same

3 document Mr. Draper used?

4 MR. TAYLOR: That is correct.

5 THE WITNESS: It is a little

6 hard to see on the screen.

7 MR. TAYLOR: Bryan, can you blow

8 that up so Mr. Seery can see it a

9 little better?

10 Q. Is that better, Mr. Seery?

11 A. Yes.

12 Q. Correct me if I am reading this

13 incorrectly but it says, "These

14 projections have been prepared by DSI with

15 input from management at the company."

16 Correct?

17 A. Correct.

18 Q. This statement also says that it

19 includes "statements, estimates and

20 forecasts provided by the company with

21 respect to the company's anticipated

22 future performance." Is that correct?

23 A. That is what it says, yes.

24 Q. You agree with me, would you

25 not, that these estimates contain a lot of

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2 A. It is slightly inartfully

3 worded, but past performance is not a

4 predictor or assurance of future

5 performance.

6 Q. You would agree, would you not,

7 that actual outcomes and results may

8 differ materially from what is estimated

9 in this document. Correct?

10 A. Correct.

11 Q. I believe in this document it

12 says management may update but DSI has no

13 duty to do so. Correct?

14 A. Yes.

15 Q. But DSI did indeed participate

16 in updating the January liquidation

17 analysis. Is that correct?

18 A. That's correct, yes.

19 Q. And just to be clear, it was not

20 prepared in accordance with SEC

21 regulations or GAAP. Correct?

22 A. That's correct.

23 Q. I believe you testified that you

24 made the assumptions that were

25 incorporated within these analyses?

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<p>1 J. SEERY</p> <p>2 A. Yes.</p> <p>3 Q. Why did you change track on</p> <p>4 selling the fixed assets for some amount</p> <p>5 of money versus now zero from the November</p> <p>6 to the January?</p> <p>7 A. I wouldn't describe that as a</p> <p>8 change of track. There is a change in</p> <p>9 timing. We didn't think they were -- I</p> <p>10 don't think and I don't think anyone else</p> <p>11 on the team thinks that they are worth a</p> <p>12 ton other than to the users. In place for</p> <p>13 use, they are worth quite a bit. Our</p> <p>14 assumption is that they are not going to</p> <p>15 have material value to the estate other</p> <p>16 than to help facilitate a deal if we can</p> <p>17 get one. If we can't, then we don't think</p> <p>18 they are worth very much.</p> <p>19 Q. Just so I understand what you</p> <p>20 mean by fixed assets, I am assuming that</p> <p>21 means the desks, the chairs, the</p> <p>22 computers, the shelving and items such as</p> <p>23 that. Is that a correct assumption?</p> <p>24 A. Yes.</p> <p>25 Q. Is there anything else in that</p>	<p>1 J. SEERY</p> <p>2 asset category that I am missing? Any</p> <p>3 material items?</p> <p>4 A. Not that we considered. The</p> <p>5 only thing that may have value beyond that</p> <p>6 that we haven't considered, at least off</p> <p>7 the top of my head, would be art. There</p> <p>8 is not a lot of great art in the office</p> <p>9 but we have not made an assessment of that</p> <p>10 value.</p> <p>11 Q. I believe, in the November</p> <p>12 assumptions, there was an assumption made</p> <p>13 that all management, advisory or shared</p> <p>14 service contracts are terminated by their</p> <p>15 effective date and all accruals or bonuses</p> <p>16 would be reversed and not paid. Is that</p> <p>17 correct?</p> <p>18 A. Correct.</p> <p>19 Q. Later in the January analysis, I</p> <p>20 believe that wording was changed just a</p> <p>21 little bit and it says, "Highland bonus</p> <p>22 plan has been terminated in accordance</p> <p>23 with its terms" --</p> <p>24 (Reporter interruption.)</p> <p>25 Q. The wording changed slightly.</p>
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<p>1 J. SEERY</p> <p>2 It says, "All management advisory or</p> <p>3 shared service contracts are terminated on</p> <p>4 their terms" -- sorry. I misspoke to the</p> <p>5 reporter and to you. It's assumption F.</p> <p>6 "Highland bonus plan has been</p> <p>7 terminated in accordance with its terms."</p> <p>8 That is slightly different wording. Why</p> <p>9 did that wording change?</p> <p>10 A. The facts changed.</p> <p>11 Q. Could you explain to me in a</p> <p>12 little more detail of what facts changed?</p> <p>13 A. The Highland bonus plan has been</p> <p>14 terminated in accordance with its terms.</p> <p>15 Q. And previously that was</p> <p>16 incorrect?</p> <p>17 A. That's correct.</p> <p>18 MR. MORRIS: Objection to the</p> <p>19 form of the question.</p> <p>20 Q. When did that fact come into</p> <p>21 being that you were able to make that</p> <p>22 change?</p> <p>23 A. Within the last month. In fact,</p> <p>24 we had a retention bankruptcy curb plan</p> <p>25 approved by the court which we substituted</p>	<p>1 J. SEERY</p> <p>2 for part of that plan, and we explained it</p> <p>3 in detail in that motion in the court.</p> <p>4 Q. Are you aware that there is a</p> <p>5 disagreement between Highland and</p> <p>6 Mr. Dondero as to the amount of employee</p> <p>7 claims that are due and payable?</p> <p>8 MR. MORRIS: Objection to form</p> <p>9 of the question.</p> <p>10 A. Not a good faith disagreement,</p> <p>11 no.</p> <p>12 Q. Thank you for that answer, and I</p> <p>13 appreciate that. I believe the question</p> <p>14 was, is there a disagreement between</p> <p>15 Mr. Dondero and Highland as to the amount</p> <p>16 payable to employees?</p> <p>17 A. I don't know.</p> <p>18 Q. Did counsel not inform you of</p> <p>19 that disagreement?</p> <p>20 MR. MORRIS: Objection to form</p> <p>21 of the question. Don't answer.</p> <p>22 Q. Are you aware that Mr. Dondero</p> <p>23 believes that Highland owes employees</p> <p>24 approximately \$35 million?</p> <p>25 A. I don't believe that to be true</p>

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<p>1 J. SEERY</p> <p>2 for an instant.</p> <p>3 Q. You don't believe that</p> <p>4 Mr. Dondero contends that?</p> <p>5 A. No; I don't believe he believes</p> <p>6 that. You didn't ask me if he contends</p> <p>7 it. You asked me if he believes it. I</p> <p>8 don't believe he believes that for a</p> <p>9 second.</p> <p>10 Q. So you are testifying that you</p> <p>11 are able to ascertain what Mr. Dondero</p> <p>12 believes?</p> <p>13 MR. MORRIS: Objection.</p> <p>14 A. You asked me if I believe it. I</p> <p>15 said I don't believe he believes it. I</p> <p>16 don't believe he believes it for a second.</p> <p>17 Q. You understand that Mr. Dondero</p> <p>18 contends that the employees are owed</p> <p>19 \$35 million?</p> <p>20 A. I don't know the amount he now</p> <p>21 contends to try to fabricate. I do not</p> <p>22 know that amount.</p> <p>23 Q. The litigation cost budget is</p> <p>24 \$6.5 million. Can you give me an</p> <p>25 approximate breakdown of where that number</p>	<p>1 J. SEERY</p> <p>2 comes from?</p> <p>3 MR. MORRIS: Objection to form</p> <p>4 of the question.</p> <p>5 A. The number comes from a</p> <p>6 negotiation with the committee.</p> <p>7 Q. And is that largely for</p> <p>8 professional fees?</p> <p>9 A. I believe so, yes.</p> <p>10 Q. In your November liquidation</p> <p>11 analysis I believe that you estimated that</p> <p>12 HarbourVest and UBS would have zero</p> <p>13 dollars' worth of claims to pay those</p> <p>14 creditors. Is that correct?</p> <p>15 A. That's correct, yes.</p> <p>16 Q. Is that true in your January</p> <p>17 projections?</p> <p>18 A. "True" is not an appropriate</p> <p>19 word. But it is not contained in our</p> <p>20 January projections.</p> <p>21 Q. What is contained for those two</p> <p>22 creditors in the January projections?</p> <p>23 A. The actual settled amount with</p> <p>24 HarbourVest and \$94.8 million for UBS,</p> <p>25 which is the estimated amount.</p>
Page 88	Page 89
<p>1 J. SEERY</p> <p>2 Q. Sorry. You said \$94 million for</p> <p>3 HarbourVest?</p> <p>4 A. No. I said the actual settled</p> <p>5 amount for HarbourVest.</p> <p>6 Q. And did you state an amount for</p> <p>7 UBS?</p> <p>8 A. I said 94.8 million.</p> <p>9 Q. I am sorry. So HarbourVest is</p> <p>10 how much?</p> <p>11 A. It is in the assumption,</p> <p>12 counselor. Line M, \$45 million is the</p> <p>13 actual settled amount.</p> <p>14 Q. And what about UBS?</p> <p>15 A. It is in the assumption,</p> <p>16 counselor. \$94.8 million for UBS.</p> <p>17 Q. So the previous amounts of zero</p> <p>18 from November to January turned out to be</p> <p>19 materially incorrect?</p> <p>20 MR. MORRIS: Objection to the</p> <p>21 form of the question. The judge made</p> <p>22 a ruling.</p> <p>23 A. The projections changed based</p> <p>24 upon the change in the facts.</p> <p>25 Q. Would you agree that</p>	<p>1 J. SEERY</p> <p>2 \$140 million worth of change is a material</p> <p>3 difference?</p> <p>4 A. Versus what?</p> <p>5 MR. MORRIS: Objection to form</p> <p>6 of the question.</p> <p>7 Q. Do you believe that an</p> <p>8 additional \$140 million worth of claims,</p> <p>9 approximately, is a material change?</p> <p>10 A. From what?</p> <p>11 Q. From November to January in</p> <p>12 performing a liquidation analysis, do you</p> <p>13 believe that an increased pool of at least</p> <p>14 \$140 million is a material change?</p> <p>15 A. Yes. I think \$140 million</p> <p>16 changing the claims pool number is a</p> <p>17 material change in the claims pool number.</p> <p>18 Yes.</p> <p>19 Q. Has Highland resolicited votes</p> <p>20 due to that material change?</p> <p>21 A. I don't believe we resolicited</p> <p>22 votes at all, no.</p> <p>23 Q. Did you estimate in your</p> <p>24 November liquidation analysis what Acis's</p> <p>25 claim was going to be?</p>

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1 J. SEERY

2 A. I believe it is included, the

3 claim amount, yes.

4 Q. Do you remember what that number

5 was?

6 A. I don't recall the exact number.

7 It is approximately \$24 million.

8 Q. And did that number change from

9 November to January?

10 A. I don't believe it did.

11 Q. And the only way to be able to

12 tell that from one version to the other

13 would be to view the roll-ups. Is that

14 correct?

15 A. That is incorrect.

16 MR. MORRIS: Objection to form

17 of the question.

18 Q. How would one ascertain that?

19 A. It would be in the assumptions.

20 Q. There is no assumption here

21 either as to Acis. Is that correct or did

22 I miss something?

23 A. There is no change in the

24 assumptions. I think you missed

25 something.

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1 J. SEERY

2 for this sale?

3 A. No.

4 Q. Did you ever do any mailouts to

5 try to solicit interest regarding that

6 sale?

7 A. No.

8 Q. Any email blasts?

9 A. No.

10 Q. Did you prepare any marketing

11 materials for the sale?

12 A. Prepared a data room; yes.

13 Q. And how did you solicit people

14 to come look at this data room?

15 A. We talked to those who had prior

16 interest and we received inquiry from a

17 number who had interest.

18 Q. If I am understanding you

19 correctly, other than those expressions or

20 prior expressions of interest, you did not

21 attempt to create an additional market.

22 Is that correct?

23 A. In addition to the prior --

24 those who had prior interest and the ones

25 who inquired, we did not attempt to create

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1 J. SEERY

2 Q. Is Acis mentioned in the

3 assumption?

4 A. I don't believe it is mentioned

5 in the assumption.

6 Q. Let's talk about the prior

7 sales. Most recently I believe you

8 testified briefly about the sale of SSP,

9 subsidiary of Trustway. Correct?

10 A. Indirect subsidiary of Trustway

11 Holdings. Yes.

12 Q. What do they do?

13 A. Make structural steel products

14 for highway construction.

15 Q. Are you familiar with who the

16 major suppliers, competitors, vendors and

17 creditors are of that company?

18 A. Some of them, yes.

19 Q. And you previously testified --

20 we don't have to go through it -- how that

21 sale came about. I believe you did not

22 employ a broker to do that sale. Is that

23 correct?

24 A. That's correct.

25 Q. Did you ever prepare any teasers

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1 J. SEERY

2 a new market; no.

3 Q. Did you notify the major

4 suppliers, competitors, vendors and

5 creditors of SSP of this potential offer?

6 A. The question is extremely

7 compound.

8 Q. Do you not understand it?

9 A. It's not answerable in one word.

10 The answer is sometimes; yes.

11 Q. The answer is sometimes you

12 contacted major suppliers, competitors,

13 vendors and creditors of SSP?

14 A. Some of those, yes.

15 Q. How did you determine which ones

16 to contact?

17 A. The ones who had prior interest.

18 Q. Do you not think it would have

19 been a good idea to contact those that

20 might not have expressed an interest or

21 reached out to Trustway or SSP about it

22 but might have an interest if contacted?

23 A. No, I do not think it would have

24 been a good idea.

25 Q. And why is that?

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1 J. SEERY

2 A. Because contacting your

3 suppliers or your competitors that you are

4 for sale is not always a good idea when

5 you are bidding for contracts using those

6 suppliers or competing against those

7 competitors.

8 Q. Did you obtain non-disclosure

9 agreements or confidentiality agreements

10 from parties that were conducting due

11 diligence?

12 A. Yes.

13 Q. How many prior expressions of

14 interest had you had before deciding to

15 conduct the sale?

16 MR. MORRIS: Objection to form

17 of the question.

18 A. I believe it was four or five.

19 Q. Ultimately how many NDAs did you

20 receive?

21 A. I don't recall.

22 Q. Less than five?

23 A. I think it would be less than

24 five.

25 Q. But more than one?

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1 J. SEERY

2 on the market?

3 A. No.

4 Q. Are you aware that a Chapter 7

5 trustee would typically and is in fact

6 required to notice those parties?

7 MR. MORRIS: Objection to the

8 form of the question.

9 A. I don't know that he would be or

10 wouldn't be for this asset. Chapter 7

11 trustee for whom?

12 Q. For Highland Capital.

13 A. I don't know that he would be or

14 wouldn't be.

15 Q. Let's move on to the OmniMax

16 sale.

17 A. Pardon me?

18 Q. Let's move on to the OmniMax

19 sale.

20 A. Yes.

21 Q. You are familiar with that

22 business?

23 A. I am.

24 Q. What do they do?

25 A. They make aluminum products that

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1 J. SEERY

2 A. Yes.

3 Q. So somewhere between -- it is

4 either two, three or four then. Is that

5 correct?

6 A. Five or less; more than one.

7 Q. Who came up with the valuation

8 target price for SSP?

9 MR. MORRIS: Objection to form

10 of the question.

11 A. There wasn't necessarily a

12 target price. There was an argue around

13 value, which was determined with the PE

14 team and myself.

15 Q. Did you employ any outside party

16 to vet that valuation?

17 A. No.

18 Q. Did you obtain a fairness

19 opinion?

20 A. No.

21 Q. Did you notify Mr. Dondero that

22 SSP was going to be put on the market?

23 A. Not that I recall, no.

24 Q. Did you notify all creditors of

25 this Debtor that SSP was going to be put

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1 J. SEERY

2 are sold in either the DIY business or

3 they have an RV business as well, mostly

4 for home improvements.

5 Q. Are you generally familiar with

6 their major suppliers, competitors,

7 vendors and creditors?

8 A. No.

9 Q. Could you tell me how the

10 OmniMax sale came about?

11 A. OmniMax was a loan that certain

12 Highland entities had into a company

13 called OmniMax. This company sat around

14 in the Highland portfolio for years and

15 years and years doing extremely poorly and

16 being undermanaged.

17 Coming into 2019, OmniMax

18 suffered some significant losses early on

19 in the year and was looking to head

20 towards a potential default. It went out

21 and sought refinancing opportunities,

22 including hybrid capital financiers. It

23 obtained some bankers to get those and it

24 went out looking for them. When that was

25 proposed, Mr. Dondero objected to it and

<p style="text-align: right;">Page 98</p> <p>1 J. SEERY</p> <p>2 began causing difficulty with getting</p> <p>3 anything done. It looked like OmniMax</p> <p>4 might have to file.</p> <p>5 He specifically threatened to</p> <p>6 blow up the transaction involving Pimco.</p> <p>7 It was a very expensive transaction and</p> <p>8 would have required OmniMax to perform</p> <p>9 exceptionally well over the projected</p> <p>10 period. But when it went away, there was</p> <p>11 another opportunity. That opportunity was</p> <p>12 with a company called SVP, an experienced</p> <p>13 distressed investor. They own senior</p> <p>14 secured debt as well as some of the debt</p> <p>15 that our entities, the Highland-managed</p> <p>16 entities controlled.</p> <p>17 SVP took the position that they</p> <p>18 wanted to purchase the debt and try to do</p> <p>19 a restructuring out of court, with the</p> <p>20 expenses being exceptionally high if they</p> <p>21 took it through court. SVP bought</p> <p>22 similarly situated debt from the ones that</p> <p>23 we managed for approximately 15 percent</p> <p>24 and then was moving forward with that</p> <p>25 transaction.</p>	<p style="text-align: right;">Page 99</p> <p>1 J. SEERY</p> <p>2 While that was going on, there</p> <p>3 was a senior secured piece that was</p> <p>4 extremely large and held by a number of</p> <p>5 distressed investors. They wanted the</p> <p>6 keys and wanted to wipe out the debt that</p> <p>7 we owned. We negotiated -- that was</p> <p>8 coming up for maturity in July.</p> <p>9 We negotiated a transaction with</p> <p>10 SVP and sold our piece to SVP but we did</p> <p>11 it on an option where they could buy our</p> <p>12 piece, and they had to buy our piece if</p> <p>13 they closed on a transaction where they</p> <p>14 were buying all or any substantial part of</p> <p>15 the company.</p> <p>16 After close negotiations, the</p> <p>17 board telling us they would turn the keys</p> <p>18 over to the secured creditors, extremely</p> <p>19 late, difficult negotiations, we finally</p> <p>20 got a deal done with SVP and the senior</p> <p>21 secured and the company. SVP signed our</p> <p>22 deal, and then Mr. Dondero turned around,</p> <p>23 while still being the portfolio manager</p> <p>24 for the CLOs at that time, basically held</p> <p>25 them up after telling me that I had</p>
<p style="text-align: right;">Page 100</p> <p>1 J. SEERY</p> <p>2 authority to sell the piece at a</p> <p>3 particular level. He retraded that very</p> <p>4 specifically. But that was, I guess, his</p> <p>5 custom, and then tried to hold us up.</p> <p>6 We had a choice to either put</p> <p>7 the public entities that he was the</p> <p>8 portfolio manager to zero by running the</p> <p>9 company through bankruptcy. If we had</p> <p>10 done that, it would have cost us more with</p> <p>11 our sharing arrangement with SVP than to</p> <p>12 pay them off. SVP negotiated a deal and</p> <p>13 his entities got paid off at a sum higher</p> <p>14 than the 30? roughly that we received.</p> <p>15 Q. Did you employ a broker in that</p> <p>16 sales process?</p> <p>17 A. No.</p> <p>18 Q. Did you create any marketing</p> <p>19 materials for that company?</p> <p>20 A. There were a myriad of marketing</p> <p>21 materials prepared for the company. The</p> <p>22 company had its own broker. The company</p> <p>23 had -- there were various investment</p> <p>24 bankers. Each of the secured creditors,</p> <p>25 our group had advisors and the company had</p>	<p style="text-align: right;">Page 101</p> <p>1 J. SEERY</p> <p>2 multiple advisors.</p> <p>3 Q. Thank you.</p> <p>4 A. The company was going to go into</p> <p>5 bankruptcy.</p> <p>6 Q. I believe you testified earlier,</p> <p>7 and I will just restate a little bit of</p> <p>8 your testimony just so we can save some</p> <p>9 time -- that a representative sample, and</p> <p>10 I believe these are probably the largest</p> <p>11 assets that are going to be sold in this</p> <p>12 wind-down plan or liquidation plan;</p> <p>13 whatever you'd like to call it -- are</p> <p>14 Trustway, Targa, CCS Medical, Cornerstone,</p> <p>15 other securities, HCLF, Korea, and then --</p> <p>16 my words not yours, Mr. Seery -- a</p> <p>17 miscellaneous category of perhaps others I</p> <p>18 believe is what you said.</p> <p>19 Is that the bulk of the assets</p> <p>20 that are going to be sold via this</p> <p>21 wind-down plan?</p> <p>22 A. I don't agree with virtually</p> <p>23 anything you said in your categorization</p> <p>24 of it.</p> <p>25 Q. Then we'll start from the top.</p>

<p style="text-align: right;">Page 102</p> <p>1 J. SEERY</p> <p>2 What are the assets that are going to be</p> <p>3 sold during this wind-down plan?</p> <p>4 A. Take it all the way to the top.</p> <p>5 This is a monetization reorganization. So</p> <p>6 you can try to claim that I have said it</p> <p>7 is a liquidation or something else but</p> <p>8 that will be hard to do since I didn't.</p> <p>9 So, please don't do that again.</p> <p>10 We looked at a number of</p> <p>11 different assets. They run through</p> <p>12 various entities, like RCP, like the</p> <p>13 directly owned assets, like Longhorn.</p> <p>14 We'll manage a bunch of different assets</p> <p>15 including CLOs. Those assets, directly or</p> <p>16 indirectly, include on the PE side</p> <p>17 Trustway, Cornerstone, CCS, JHT and Targa.</p> <p>18 In addition, there are</p> <p>19 securities, significant holdings in MGM</p> <p>20 Studios, other securities including</p> <p>21 positions in real property loans, and the</p> <p>22 aforementioned Korea Fund.</p> <p>23 I should also mention that I had</p> <p>24 mentioned before we also own an interest</p> <p>25 in funds called PetroCap, which are energy</p>	<p style="text-align: right;">Page 103</p> <p>1 J. SEERY</p> <p>2 funds primarily focused on oil.</p> <p>3 Q. Let's see if we have the list</p> <p>4 together. I am not trying to place words</p> <p>5 in your mouth. I am just trying to get an</p> <p>6 accurate list together. Trustway, JHT,</p> <p>7 Targa, securities which include MGM</p> <p>8 Studios; real property loans, Korea Fund,</p> <p>9 Petro funds. I wasn't sure if you said</p> <p>10 CCS Medical?</p> <p>11 A. I did.</p> <p>12 Q. Am I missing anything from my</p> <p>13 list that I just read?</p> <p>14 MR. MORRIS: Objection to the</p> <p>15 form of the question.</p> <p>16 A. I don't know what your list is</p> <p>17 but I assume if that is your list you</p> <p>18 wouldn't be missing anything on it. My</p> <p>19 list would be extensively longer because</p> <p>20 there is lots of assets in the total</p> <p>21 amount of assets that we will be managing</p> <p>22 in the vehicles.</p> <p>23 Q. Let's just take Trustway first.</p> <p>24 That is an easy example. Have you engaged</p> <p>25 any brokers to sell this business?</p>
<p style="text-align: right;">Page 104</p> <p>1 J. SEERY</p> <p>2 A. Yes.</p> <p>3 Q. Who is that?</p> <p>4 A. Rothschild.</p> <p>5 Q. Sorry? Who?</p> <p>6 A. Rothschild.</p> <p>7 Q. Forgive me. I am familiar with</p> <p>8 a Rothschild law firm. Is there a</p> <p>9 separate brokerage house also named that?</p> <p>10 A. Yes.</p> <p>11 Q. Have they prepared marketing</p> <p>12 materials?</p> <p>13 A. Yes. I should say, when you</p> <p>14 said have you prepared, I assume you meant</p> <p>15 Highland. I didn't think you meant me as</p> <p>16 myself. Pre-petition, Rothschild was</p> <p>17 retained by the company, not by HCMLP.</p> <p>18 Q. Have they begun a marketing</p> <p>19 process for Trustway? Has Highland -- it</p> <p>20 was inartfully asked. Has Highland begun</p> <p>21 a marketing process?</p> <p>22 A. Separate from the Rothschild,</p> <p>23 no.</p> <p>24 Q. Is that marketing process</p> <p>25 ongoing?</p>	<p style="text-align: right;">Page 105</p> <p>1 J. SEERY</p> <p>2 A. It's -- that is not a fair word.</p> <p>3 Q. Okay.</p> <p>4 A. They are still engaged.</p> <p>5 Q. Does Highland intend to assume</p> <p>6 that brokerage contract with Rothschild?</p> <p>7 MR. MORRIS: Objection to the</p> <p>8 form of the question.</p> <p>9 A. It is not our contract.</p> <p>10 Q. Is it Trustway's contract?</p> <p>11 A. Yes.</p> <p>12 Q. Has that contract terminated or</p> <p>13 is it terminable or is there still a term</p> <p>14 to run on it?</p> <p>15 A. I believe that that contract is</p> <p>16 in its tail but we'll likely continue it,</p> <p>17 meaning Trustway will likely continue it.</p> <p>18 Q. You ultimately will direct</p> <p>19 whether Trustway continues it or not.</p> <p>20 Correct?</p> <p>21 A. With management. I would do</p> <p>22 that with management.</p> <p>23 Q. You said the marketing process</p> <p>24 is ongoing wouldn't be a fair</p> <p>25 characterization. Why do you say that?</p>

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1 J. SEERY

2 A. We are not out shopping it right

3 now.

4 Q. And why is that?

5 A. We took a break.

6 Q. And why is that?

7 A. Didn't like the market

8 conditions.

9 Q. And what do you believe are

10 unfavorable about the market conditions?

11 A. The market has evolved. There

12 was a major -- it is really way too

13 complicated for this discussion. But we

14 don't like the market conditions. We

15 think the company has got opportunities to

16 continue to prove its business plan. When

17 the market conditions are better we'll

18 determine whether to access or not.

19 Q. Is it cash flow positive?

20 A. Yes.

21 Q. How about JHT? Have they or

22 Highland employed a broker?

23 A. No.

24 Q. Do you intend to hire a broker?

25 A. Not necessarily.

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1 J. SEERY

2 been prepared?

3 A. I don't believe so.

4 Q. Any teasers been prepared?

5 A. I'd consider that a marketing

6 material.

7 Q. Fair enough.

8 I believe you previously

9 testified that the MGM stock is

10 semi-liquid. Where are they actually

11 traded?

12 MR. MORRIS: Objection to form

13 of the question.

14 A. It is an over-the-counter

15 market.

16 MR. TAYLOR: We were talking

17 over each other. For the court

18 reporter's purposes, Mr. Morris made

19 an objection. I believe it was as to

20 form.

21 MR. MORRIS: Correct.

22 Q. The question is still

23 outstanding if you understand. Otherwise

24 I will restate.

25 A. It's traded in the gray market.

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1 J. SEERY

2 Q. Have you prepared any marketing

3 materials for JHT?

4 A. No.

5 Q. How about Targa? Have you

6 employed a broker?

7 A. No.

8 Q. Any --

9 A. Brokers have been talked to but

10 we haven't employed one, no.

11 Q. How many brokers have you

12 interviewed or interfaced with?

13 A. I haven't talked to any.

14 Q. How many has Targa been talking

15 to?

16 A. It talked to at least two

17 potential counterparties for

18 monetizations.

19 Q. So when you say

20 "counterparties," you are talking not

21 brokers; they have actually talked with

22 potential buyers?

23 A. Potential buyers and brokers.

24 Brokers could also participate in a buy.

25 Q. Have any marketing materials

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1 J. SEERY

2 It's OTC.

3 Q. What percentage of the

4 securities that Highland holds is MGM

5 securities approximately?

6 MR. MORRIS: Objection to form

7 of the question.

8 A. You have to break it down

9 significantly. Highland owns its own

10 holdings directly in MGM securities. Then

11 Highland manages different funds that own

12 MGM securities, and those funds are owned

13 by different investors. Or if they are

14 not owned by those investors they have

15 different interests in those funds.

16 Q. Sometimes Highland owns a

17 portion of those funds that own the MGM

18 securities. Is that correct?

19 A. That's correct.

20 Q. Out of the actual equities that

21 Highland owns or owns a percentage of

22 funds that owns them, what percentage of

23 the securities in which Highland has an

24 interest is MGM Studios? Is it

25 50 percent? Is it 20 percent?

<p style="text-align: right;">Page 110</p> <p>1 J. SEERY</p> <p>2 MR. MORRIS: Objection to form.</p> <p>3 A. I don't understand your</p> <p>4 question. But maybe I can get there more</p> <p>5 easily. Are you asking if the direct or</p> <p>6 indirect ownership of MGM constitutes a</p> <p>7 substantial portion of the securities with</p> <p>8 which Highland is involved?</p> <p>9 Q. That was much more artfully</p> <p>10 asked. Thank you very much. Yes, that</p> <p>11 was precisely what I was trying to get to.</p> <p>12 A. The vast majority.</p> <p>13 Q. I truly don't know the answer to</p> <p>14 this so I am just asking. When you say</p> <p>15 "vast majority," are we talking around</p> <p>16 90 percent?</p> <p>17 A. It has to be at least that</p> <p>18 amount.</p> <p>19 Q. Am I correct in presuming that</p> <p>20 any kind of sell-down of MGM securities</p> <p>21 will probably have to be in a step-down</p> <p>22 basis such that you don't flood the</p> <p>23 market?</p> <p>24 A. A what basis?</p> <p>25 Q. On a step-down basis or gradual</p>	<p style="text-align: right;">Page 111</p> <p>1 J. SEERY</p> <p>2 basis such you don't flood the market and</p> <p>3 significantly impact the price?</p> <p>4 MR. MORRIS: Objection to the</p> <p>5 form of the question.</p> <p>6 A. That is incorrect.</p> <p>7 Q. You might be looking for a bulk</p> <p>8 buyer?</p> <p>9 A. It could be.</p> <p>10 Q. Do you feel any more qualified</p> <p>11 to sell those than a hypothetical Chapter</p> <p>12 7 trustee?</p> <p>13 MR. MORRIS: Objection to form</p> <p>14 of the question.</p> <p>15 A. It would depend on the trustee.</p> <p>16 Q. The real property loans that</p> <p>17 Highland owns or owns indirectly, those</p> <p>18 are all secured presumably by real estate.</p> <p>19 Correct?</p> <p>20 MR. MORRIS: Objection to form</p> <p>21 of the question.</p> <p>22 A. It's well more complicated than</p> <p>23 that because Highland set up a bit of a</p> <p>24 tax scheme around these assets. So, we</p> <p>25 are working our way through it.</p>
<p style="text-align: right;">Page 112</p> <p>1 J. SEERY</p> <p>2 Q. When you say "we are working our</p> <p>3 way through it," who are you working with</p> <p>4 on that?</p> <p>5 A. Myself, my team at DSI,</p> <p>6 Pachulski, other outside counsel.</p> <p>7 Q. Any appointed Chapter 7 trustee</p> <p>8 could potentially hire DSI to perform the</p> <p>9 same work. Correct?</p> <p>10 A. I suppose potentially, if the</p> <p>11 court approved it, yes.</p> <p>12 Q. The Korea Fund, has Highland or</p> <p>13 its appropriate subsidiary hired a broker</p> <p>14 on that?</p> <p>15 A. No.</p> <p>16 Q. Prepared any marketing</p> <p>17 materials?</p> <p>18 A. No.</p> <p>19 Q. How about CCS Medical? Have</p> <p>20 they or Highland hired any brokers?</p> <p>21 A. Yes.</p> <p>22 Q. Who have they hired?</p> <p>23 A. Cantor Fitzgerald.</p> <p>24 Q. And is that Highland employing</p> <p>25 them, or is that CCS Medical?</p>	<p style="text-align: right;">Page 113</p> <p>1 J. SEERY</p> <p>2 A. That was CCS Medical.</p> <p>3 Q. Is that on track still in its</p> <p>4 beginning term or is it now terminable?</p> <p>5 MR. MORRIS: Objection to form</p> <p>6 of the question.</p> <p>7 A. I believe the contract is</p> <p>8 actually terminated, and I believe it is</p> <p>9 out of its tail but it may not be</p> <p>10 completely.</p> <p>11 Q. Terminated and may or may not be</p> <p>12 out of the tail?</p> <p>13 A. Correct.</p> <p>14 Q. Thank you.</p> <p>15 How about Petro funds -- oh,</p> <p>16 sorry. Backing up, I will ask the same</p> <p>17 question. I presume since you have hired</p> <p>18 a broker that marketing materials have</p> <p>19 been prepared for CCS Medical?</p> <p>20 A. I didn't hire a broker.</p> <p>21 Q. I thought Cantor Fitzgerald had</p> <p>22 been hired for CCS Medical?</p> <p>23 A. You asked me -- you said "I</p> <p>24 believe you have hired a broker." I have</p> <p>25 not hired a broker. You can read the</p>

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1 J. SEERY
2 question back if you like.
3 Q. Thank you for keeping me very
4 precise. I appreciate that, Mr. Seery.
5 Have the brokers for CCS Medical
6 prepared marketing materials?
7 A. Yes.
8 Q. Have they done any mailouts?
9 MR. MORRIS: Objection to form
10 of the question.
11 A. I doubt it. That is not how
12 this business works.
13 Q. Well, how have they gone about
14 creating a market?
15 MR. MORRIS: Objection to the
16 form of the question.
17 A. They don't need to create a
18 market. They market the company to
19 potential buyers who are either strategic
20 or private equity who are looking for
21 these types of assets. So, the markets
22 exist, and then they go out and they
23 present to the players in the market,
24 generally with whom they are most familiar
25 because they are typically regular

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1 J. SEERY
2 Q. Highland Capital controls CCS
3 Medical's board?
4 A. No.
5 Q. How many seats do they hold on
6 that board?
7 A. Currently, I believe two.
8 Q. And the board is how large?
9 A. I believe it's seven.
10 Q. So they are a minority owner of
11 CCS Medical?
12 MR. MORRIS: Objection to form
13 of the question.
14 A. CCS is way more complicated than
15 this.
16 Q. Can you give me the 10,000-foot
17 overview for dummies?
18 A. Highland -- different Highland
19 funds own loans. There is first-lien
20 loans. There is a revolver owned by two
21 other hedge funds that also own interests.
22 There are first-lien loans, there are
23 second-lien loans, and there is equity.
24 Each are owned by slightly different
25 slices of a group of different investors.

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1 J. SEERY
2 players. And the banker, if they know and
3 are experienced, will know the players in
4 the market. That's how investment bankers
5 generally approach these types of
6 assignments.
7 Q. Okay.
8 A. There are myriad, you know, more
9 transactions that are done without brokers
10 than there are with brokers.
11 Q. So Cantor Fitzgerald has
12 approached players that they know might be
13 interested in acquiring a company similar
14 to CCS Medical. Is that correct?
15 A. I didn't review exactly how they
16 did it. They certainly went out and
17 marketed the company and received bids for
18 the company.
19 Q. Does CCS Medical intend to renew
20 with Cantor Fitzgerald or hire a new
21 broker?
22 A. I don't know the answer to that.
23 Q. Who is going to make that
24 decision for CCS Medical?
25 A. The CCS board.

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1 J. SEERY
2 Q. Fair enough.
3 Is Highland at each level of
4 that capital structure or --
5 A. Not in the revolver. You say
6 "Highland." Different funds are in
7 different places and then there is
8 different weighting in each of the
9 tranches.
10 Q. Thank you for that preciseness
11 and I do appreciate your ability to see
12 where I am going with these questions and
13 just get to meat of the matter. That is
14 very much appreciated.
15 Petro funds, have they or
16 Highland hired a broker?
17 A. It is PetroCap. I don't know if
18 they have hired a broker. I have not
19 hired a broker or Highland has not hired a
20 broker.
21 Q. Does Highland intend upon hiring
22 a broker?
23 A. Not necessarily.
24 Q. To be clear, just so I believe
25 we are on the same page, when I say

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1 J. SEERY
2 broker, that could mean broker or
3 investment banker. Is that fair?
4 A. That is fair.
5 Q. And that is how you have been
6 answering these questions. Correct?
7 A. Yes.
8 Q. Do you know if PetroCap
9 independently is going to hire a broker or
10 investment banker?
11 A. I don't know.
12 Q. Do you know if any marketing
13 materials have been prepared?
14 A. I don't know.
15 Q. For each of the entities that we
16 just went through, has Highland performed
17 an analysis of total value of each
18 company?
19 A. Which entities?
20 Q. The one we just went through. I
21 will list them for you. Trustway, JHT,
22 Targa, the real property loans as an asset
23 category. Korea Fund, CCS Medical and
24 PetroCap.
25 A. We have values for each of those

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1 J. SEERY
2 for a second. You have certain cost
3 that --
4 MR. MORRIS: Objection to form
5 of the question.
6 (Reporter interruption.)
7 Q. Highland will incur certain
8 costs to wind down, through 2022, under
9 its proposed plan of liquidation. Is that
10 correct?
11 MR. MORRIS: Objection to form
12 of the question.
13 A. No. We project certain costs to
14 operate the business through 2022. Yes.
15 Q. And you made a distinction
16 between my question and the answer you
17 gave. Could you explain to me what that
18 distinction is? I am not picking up on
19 why you made the distinction.
20 A. Because you said "wind down the
21 business." We intend to operate the
22 business.
23 MR. MORRIS: Objection to use of
24 the phrase "plan of liquidation."
25 Q. Is it your position or is it

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1 J. SEERY
2 properties; yes.
3 Q. And I presume that means both a
4 gross value and then a net value to
5 Highland. Correct?
6 A. Yes.
7 Q. And DSI helped you prepare
8 those?
9 A. The answer is no. Each of these
10 are kept in -- Highland has a valuation
11 procedure and methodology and we stay
12 consistent with that valuation procedure
13 and methodology.
14 Q. And those are all records of
15 Highland. Correct?
16 A. Yes.
17 Q. And those have all been written
18 down somewhere. Correct?
19 A. I believe they have all been
20 written down somewhere.
21 Q. And those could be made
22 available to any Chapter 7 trustee that
23 could be appointed?
24 A. Yes.
25 Q. Let's turn our attention here

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1 J. SEERY
2 Highland's position, Mr. Seery, that this
3 is a reorganization?
4 A. Yes.
5 Q. Maybe we have a fundamental
6 misunderstanding. My understanding is
7 that your plan and your analyses says that
8 all assets, substantially all assets will
9 be sold by the end of December 2022. Is
10 that correct?
11 A. That is our assumption. Yes.
12 Q. So how is that not a wind-down?
13 A. Because we intend to operate the
14 business and continue to operate to seek
15 value. I consider a wind-down to be a
16 liquidation where I immediately start
17 looking for a sale every day and try to
18 hit the fastest bid that I can get. That
19 is not what we are trying to do. We are
20 trying to maximize value based on how we
21 look at market conditions using
22 professionals to manage the assets.
23 Q. So your distinction, so I have
24 this correct, is that because you are
25 going to operate in the interim period

<p style="text-align: right;">Page 122</p> <p>1 J. SEERY</p> <p>2 while you gradually sell these assets off</p> <p>3 over a two-year period, it is not a</p> <p>4 wind-down or liquidation?</p> <p>5 A. That's correct.</p> <p>6 MR. TAYLOR: Now that we have</p> <p>7 established that that is what</p> <p>8 Highland's position is, obviously</p> <p>9 Mr. Dondero takes a different</p> <p>10 position. Can we just have a running</p> <p>11 objection from Mr. Morris to the</p> <p>12 extent that I use the phrase "wind</p> <p>13 down" or "liquidation plan," that he</p> <p>14 has a running objection as to the form</p> <p>15 of that question?</p> <p>16 THE WITNESS: We could stipulate</p> <p>17 that Mr. Dondero is incapable of</p> <p>18 selling assets. That has been proved</p> <p>19 over the last 15 years, and he takes</p> <p>20 other people's money in forms that are</p> <p>21 not permanent capital because he is</p> <p>22 not able to access public markets and</p> <p>23 just uses it for his own purposes.</p> <p>24 That's a good stipulation.</p> <p>25 MR. MORRIS: Clay, to answer</p>	<p style="text-align: right;">Page 123</p> <p>1 J. SEERY</p> <p>2 your question, as you saw through</p> <p>3 Mr. Draper's testimony, as you see in</p> <p>4 the disclosure statement, as you saw</p> <p>5 in the documents we provided last</p> <p>6 night, we have projections for the</p> <p>7 reorganization and we have projections</p> <p>8 for the liquidation. They are</p> <p>9 different because they are not the</p> <p>10 same thing.</p> <p>11 Liquidation would require the</p> <p>12 immediate sale of assets at a fire</p> <p>13 sale. That is not what the Debtor is</p> <p>14 doing. If you want to stipulate to</p> <p>15 that distinction or if you want to</p> <p>16 stipulate that that is what we contend</p> <p>17 the distinction is, I am happy to do</p> <p>18 it. I don't understand why this is so</p> <p>19 difficult for folks to understand.</p> <p>20 There is a liquidation analysis,</p> <p>21 which is a fire sale -- let's shut it</p> <p>22 down, let's get rid of everything.</p> <p>23 And there is what we are doing, which</p> <p>24 is going to operate the business in</p> <p>25 order to maximize value over an</p>
<p style="text-align: right;">Page 124</p> <p>1 J. SEERY</p> <p>2 extended period of time. That is the</p> <p>3 distinction and that is what I am</p> <p>4 willing to stipulate is the</p> <p>5 distinction.</p> <p>6 MR. TAYLOR: I appreciate the</p> <p>7 explanation. Obviously, I believe</p> <p>8 this is better left for argument in</p> <p>9 front of the court. If you want to</p> <p>10 make either a running objection or,</p> <p>11 alternatively, if you want to state it</p> <p>12 every time, that is fine, too.</p> <p>13 I would note for the record that</p> <p>14 I move to strike Mr. Seery's response</p> <p>15 or, I would say, non-response to a</p> <p>16 question that was not asked, as</p> <p>17 non-responsive.</p> <p>18 THE WITNESS: What was the</p> <p>19 question? I thought you were looking</p> <p>20 for me to form a stipulation we could</p> <p>21 agree on. If there is a different</p> <p>22 stipulation, go ahead. I gave you</p> <p>23 what I would stipulate to.</p> <p>24 MR. TAYLOR: Thank you for that.</p> <p>25 Q. You would agree, would you not,</p>	<p style="text-align: right;">Page 125</p> <p>1 J. SEERY</p> <p>2 Mr. Seery, that under Highland's plan,</p> <p>3 that they are going to incur some costs</p> <p>4 for the Claimant trust? Correct?</p> <p>5 A. Yes.</p> <p>6 Q. One of those costs is going to</p> <p>7 be to pay the trustees. Correct?</p> <p>8 A. Yes.</p> <p>9 Q. How many trustees are there</p> <p>10 going to be?</p> <p>11 A. I will be the Claimant trustee</p> <p>12 unless the Oversight Committee decides</p> <p>13 they want to have somebody else.</p> <p>14 Q. And if the Oversight Committee</p> <p>15 decides they want somebody else, how much</p> <p>16 is that person going to be paid, or</p> <p>17 persons?</p> <p>18 A. I have no idea.</p> <p>19 Q. How much are you going to be</p> <p>20 paid?</p> <p>21 A. Base compensation is \$150,000 a</p> <p>22 month.</p> <p>23 Q. What other types of compensation</p> <p>24 other than base compensation?</p> <p>25 A. Bonus compensation.</p>

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<p>1 J. SEERY</p> <p>2 Q. You said your base compensation</p> <p>3 was how much per month?</p> <p>4 A. \$150,000 per month.</p> <p>5 Q. Is that just for you?</p> <p>6 A. That's correct.</p> <p>7 Q. Do you have to bear any costs</p> <p>8 out of that 150,000 per month?</p> <p>9 A. A man's got to eat.</p> <p>10 Q. Is that the answer? No?</p> <p>11 A. No; I don't bear any other than</p> <p>12 my own costs.</p> <p>13 Q. Other than your personal</p> <p>14 costs --</p> <p>15 A. They are business costs. They</p> <p>16 are business costs. This all doesn't</p> <p>17 happen for free.</p> <p>18 Q. So you are going to bear your</p> <p>19 own overhead, for instance your office</p> <p>20 space?</p> <p>21 A. Yes.</p> <p>22 Q. But to be fair, travel and, for</p> <p>23 instance, if you had to hire an expert,</p> <p>24 those would not be costs that you would</p> <p>25 bear. Correct?</p>	<p>1 J. SEERY</p> <p>2 A. That's correct.</p> <p>3 MR. TAYLOR: I have had a</p> <p>4 request for a bathroom break by one of</p> <p>5 the other counsel on the phone. If</p> <p>6 it's okay, could we take -- I am fine</p> <p>7 with a ten-minute break. Mr. Seery,</p> <p>8 if you would like longer that is fine.</p> <p>9 THE WITNESS: However short you</p> <p>10 want.</p> <p>11 MR. TAYLOR: John, do you have a</p> <p>12 preference?</p> <p>13 MR. MORRIS: I don't. I</p> <p>14 appreciate the inquiry. Whatever you</p> <p>15 want.</p> <p>16 MR. TAYLOR: Let's take a</p> <p>17 15-minute break. I have about 11:40</p> <p>18 Central Time. Let's reconvene at</p> <p>19 11:58.</p> <p>20 (Recess.)</p> <p>21 BY MR. TAYLOR:</p> <p>22 Q. Mr. Seery, this is Clay Taylor</p> <p>23 again. Thank you for allowing us to take</p> <p>24 a break.</p> <p>25 I believe you were testifying or</p>
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<p>1 J. SEERY</p> <p>2 we were talking about how much your fees</p> <p>3 as the Claimant trustee was going to be</p> <p>4 and we had left off where you had said</p> <p>5 there was also some bonus compensation</p> <p>6 available to you. Could you briefly</p> <p>7 explain to the court what that bonus</p> <p>8 structure is?</p> <p>9 A. It's to be negotiated within</p> <p>10 45 days of the confirmation.</p> <p>11 Q. Have you begun those</p> <p>12 negotiations?</p> <p>13 A. No.</p> <p>14 Q. I presume those negotiations</p> <p>15 will be conducted between yourself and the</p> <p>16 Unsecured Creditors' Committee?</p> <p>17 A. I think it will actually be</p> <p>18 myself and the Oversight Committee, which</p> <p>19 will consist of the Claimant -- the</p> <p>20 Creditors' Committee members, at least</p> <p>21 three of them, as well as one or two</p> <p>22 independents, depending on certain timing.</p> <p>23 Q. Have you been provided an ask as</p> <p>24 of this time?</p> <p>25 A. I have not, no.</p>	<p>1 J. SEERY</p> <p>2 Q. There is also going to be a</p> <p>3 litigation trust established under the</p> <p>4 proposed plan. Correct?</p> <p>5 A. That's correct.</p> <p>6 Q. How many trustees will there be?</p> <p>7 A. I believe, just one.</p> <p>8 Q. What is the proposed</p> <p>9 compensation for that trustee?</p> <p>10 A. I don't know yet.</p> <p>11 Q. Would they be paid on a monthly</p> <p>12 basis?</p> <p>13 A. I don't know. I assume he will</p> <p>14 have some contingency arrangement. He is</p> <p>15 an experienced litigation trustee, and I</p> <p>16 assume he will be paid a combination of</p> <p>17 base plus some upside depending on</p> <p>18 recoveries.</p> <p>19 Q. So that would be presumably a</p> <p>20 monthly fee plus a step contingency</p> <p>21 arrangement? Is that your experience?</p> <p>22 A. I am not familiar with the term</p> <p>23 "step contingency arrangement," but there</p> <p>24 are innumerable ways to structure</p> <p>25 contingency fee arrangements in my</p>

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1 J. SEERY
2 experience.
3 Q. That compensation has yet to be
4 discussed?
5 A. It hasn't been discussed with
6 me. No. I won't have any oversight over
7 it or responsibility for it.
8 Q. Ultimately that will come out
9 of -- any fees that are paid under that
10 arrangement will come out of the ultimate
11 recovery made available to the unsecured
12 creditors and any subordinate classes to
13 the unsecured creditors. Correct?
14 A. As a general statement, I think
15 that's correct, yes.
16 Q. I believe there has been some
17 discussion in the pleadings in this case
18 that D&O coverage would be afforded to the
19 trustees. Is that correct?
20 A. That's correct.
21 Q. Have you priced that?
22 A. We have.
23 Q. How much is that anticipated to
24 run per annum?
25 A. I haven't -- I don't have that

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1 J. SEERY
2 require D&O coverage. Is that correct?
3 MR. MORRIS: Objection to the
4 form of the question.
5 A. I don't know if a Chapter 7
6 trustee would require any D&O or not.
7 Q. You are an experienced
8 insolvency professional. Correct?
9 A. Yes.
10 MR. MORRIS: Objection to form
11 of the question.
12 Q. You do have experience with
13 Chapter 7 trustees also. Correct?
14 A. Dated, but I have some.
15 Q. In your experience, have they
16 typically gone out and obtained D&O
17 coverage?
18 MR. MORRIS: Objection to form
19 of the question.
20 A. My experience is it depends on
21 the Chapter 7 trustee, where they are
22 coming from, whether they are in an
23 institution that has coverage, whether
24 they are going to be using other people.
25 They have qualified immunity, but I am not

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1 J. SEERY
2 specifically at my fingertips. I just
3 don't recall the specific amount. We went
4 through it in the last few days and I just
5 don't have the amount.
6 Q. Would you mind providing that
7 figure to your counsel to be distributed
8 to the objecting creditors?
9 A. I don't know --
10 MR. MORRIS: We will take it
11 under advisement. Douglas had also
12 made a request earlier during the
13 deposition where I provided the same
14 response. Respectfully, I'd ask each
15 of you to just send me an email at the
16 conclusion of the deposition because I
17 am not going to be able to -- I don't
18 think I should have the burden of
19 keeping track of this. But it's a
20 fair request. Send it to us in
21 writing and we'll respond promptly.
22 MR. TAYLOR: We certainly will
23 make a note to send that to you.
24 Q. Mr. Seery, if a Chapter 7
25 trustee were appointed, they wouldn't

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1 J. SEERY
2 an expert in how they deal with their own
3 coverages.
4 Q. For purposes of the liquidation
5 analysis versus the plan analysis that is
6 presented in the November and January plan
7 analysis versus liquidation analysis, did
8 you make some assumptions regarding how
9 much D&O coverage would cost under the
10 plan?
11 A. Under the plan analysis for
12 certain, yes.
13 Q. And what did you estimate that
14 D&O coverage to cost?
15 A. I don't recall off the top of my
16 head the exact amount. I don't know if we
17 have a line item for it, but I just don't
18 recall specifically that line item.
19 Q. Are those line items contained
20 in what I will refer to as the roll-ups
21 for the plan versus liquidation analysis?
22 A. The full model does contain a
23 specific line item for D&O. Yes.
24 MR. TAYLOR: Bryan, I will ask
25 you to include that on our list of

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<p>1 J. SEERY</p> <p>2 items we are going to request from</p> <p>3 Mr. Morris in addition to what was</p> <p>4 previously discussed.</p> <p>5 Q. I presume the United States</p> <p>6 Trustee fees are included in the costs</p> <p>7 included within the plan analysis?</p> <p>8 A. Yes.</p> <p>9 Q. Were any U.S. Trustee fees</p> <p>10 included in the liquidation analysis?</p> <p>11 A. I believe that they were. I am</p> <p>12 not sure of that, though. I don't recall</p> <p>13 specifically if they were just subsumed in</p> <p>14 the trustee fees or if there is a separate</p> <p>15 U.S. Trustee fee. I just don't know the</p> <p>16 answer to that.</p> <p>17 Q. Has Highland conducted an</p> <p>18 analysis of what a Chapter 7 trustee's</p> <p>19 fees would be calculated at?</p> <p>20 A. For the plan assumption</p> <p>21 purposes, I believe we do, yes.</p> <p>22 Q. And that is contained as a</p> <p>23 roll-up and specific line items, too.</p> <p>24 Correct?</p> <p>25 A. Yes.</p>	<p>1 J. SEERY</p> <p>2 Q. Are certain brokers' fees</p> <p>3 included within both the plan analysis and</p> <p>4 the liquidation analysis?</p> <p>5 A. I am not quite sure what you</p> <p>6 are -- I don't understand the question.</p> <p>7 Q. Do you anticipate incurring any</p> <p>8 broker or investment banker fees under the</p> <p>9 plan analysis?</p> <p>10 A. When you say me --</p> <p>11 Q. Does Highland.</p> <p>12 A. Highland, I don't believe so,</p> <p>13 no.</p> <p>14 Q. Are those brokers' fees or</p> <p>15 investment banker fees included when you</p> <p>16 get to a net figure that would flow to</p> <p>17 Highland's creditors?</p> <p>18 A. Depending on the asset, yes.</p> <p>19 Q. So certain investment banking or</p> <p>20 brokerage fees are included at the</p> <p>21 subsidiary level?</p> <p>22 A. Yes.</p> <p>23 Q. And that is only -- to be fair,</p> <p>24 that is only as to some assets. Correct?</p> <p>25 A. It is subsumed within the asset</p>
Page 136	Page 137
<p>1 J. SEERY</p> <p>2 amount. Correct. It is in that amount.</p> <p>3 Q. And the detail for that is</p> <p>4 included within, again, those roll-ups?</p> <p>5 A. I don't believe that we broke</p> <p>6 out brokers' fees or investment banker</p> <p>7 fees for any individual assets. We</p> <p>8 assumed a net recovery from those assets.</p> <p>9 Whether we use a broker or not will depend</p> <p>10 on the circumstances and situation we</p> <p>11 encounter in the market at the time.</p> <p>12 Q. So it would be impossible for</p> <p>13 myself, the court or any reviewing court</p> <p>14 to understand which ones have an assumed</p> <p>15 broker or investment banker fees at each</p> <p>16 asset? Is that correct?</p> <p>17 A. No, that is not correct.</p> <p>18 Q. How would one determine whether</p> <p>19 an investment banker or brokerage fee was</p> <p>20 included within each asset sale?</p> <p>21 A. We could consider each asset</p> <p>22 individually and I could walk through what</p> <p>23 those are. But it could change.</p> <p>24 Q. But within the roll-ups, when</p> <p>25 examining those papers how would one</p>	<p>1 J. SEERY</p> <p>2 determine that?</p> <p>3 A. There wouldn't be a net amount.</p> <p>4 There is only a net amount in the</p> <p>5 roll-ups. It doesn't show whether there</p> <p>6 is a broker used or not.</p> <p>7 Q. So the only way to determine</p> <p>8 that would be to walk through each</p> <p>9 individual potential asset sale and ask</p> <p>10 you that question whether an investment</p> <p>11 banking fee was included in that?</p> <p>12 A. Yeah. We put a net amount. We</p> <p>13 don't believe it will be reduced by some</p> <p>14 fee. If we hired a separate broker we</p> <p>15 would expect to be able to get a higher</p> <p>16 amount to cover the brokerage fee.</p> <p>17 Q. Are the legal fees that would be</p> <p>18 incurred in connection with each asset</p> <p>19 sale broken out by line item?</p> <p>20 A. No.</p> <p>21 Q. Are they included within the net</p> <p>22 sales figure?</p> <p>23 A. Yes.</p> <p>24 Q. How about accountant fees? Are</p> <p>25 those covered for under the plan analysis?</p>

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<p>1 J. SEERY</p> <p>2 A. Accountant fees are certainly</p> <p>3 covered under the plan analysis, yes.</p> <p>4 Q. Are they accounted for under the</p> <p>5 liquidation analysis?</p> <p>6 A. I believe so, yes.</p> <p>7 Q. Are those numbers the same under</p> <p>8 the plan analysis and the liquidation</p> <p>9 analysis?</p> <p>10 A. I don't recall off the top of my</p> <p>11 head.</p> <p>12 Q. How about legal fees? Are those</p> <p>13 the same under the plan analysis as</p> <p>14 compared to liquidation analysis?</p> <p>15 A. I believe they are different.</p> <p>16 Q. And are they higher under the</p> <p>17 plan analysis or liquidation analysis?</p> <p>18 A. I think they are higher under</p> <p>19 the plan analysis.</p> <p>20 Q. Why is that?</p> <p>21 A. The period runs longer and there</p> <p>22 is more issues to be dealt with as opposed</p> <p>23 to a trustee just selling assets and then</p> <p>24 distributing later.</p> <p>25 Q. With what has been provided, can</p>	<p>1 J. SEERY</p> <p>2 one ascertain what that delta is?</p> <p>3 A. Of the legal fees?</p> <p>4 Q. Correct.</p> <p>5 A. I think -- I'd have to look at</p> <p>6 each line. I don't think we have broken</p> <p>7 it out in this particular presentation. A</p> <p>8 lot of that will just depend on how</p> <p>9 frivolously litigious you are.</p> <p>10 MR. TAYLOR: Move to strike the</p> <p>11 characterization as non-responsive but</p> <p>12 thank you for your answer.</p> <p>13 MR. MORRIS: Motion granted.</p> <p>14 Q. Now, I could be wrong on this,</p> <p>15 and you may know or may not. If you don't</p> <p>16 know, that is fine.</p> <p>17 I would presume that both the</p> <p>18 Claimant trust and the litigation trust</p> <p>19 are going to be required to file separate</p> <p>20 tax returns each year. Is that your</p> <p>21 understanding?</p> <p>22 A. I don't think that's the case,</p> <p>23 no.</p> <p>24 Q. And why is that?</p> <p>25 A. I think they roll up into the</p>
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<p>1 J. SEERY</p> <p>2 one trust.</p> <p>3 Q. Have you examined that issue?</p> <p>4 A. I believe we have, yes.</p> <p>5 Q. And did you obtain either an</p> <p>6 opinion of an accountant or a legal</p> <p>7 conclusion to that effect?</p> <p>8 A. You know better, but the answer</p> <p>9 is we got guidance; yes.</p> <p>10 Q. Now, you estimate that you are</p> <p>11 going to collect about \$60 million more in</p> <p>12 asset sales in the plan analysis rather</p> <p>13 than the liquidation analysis. Is that a</p> <p>14 fair characterization of what the January</p> <p>15 plan analysis versus liquidation analysis</p> <p>16 shows?</p> <p>17 A. I think the two, in terms of the</p> <p>18 total amounts, are on the sheet. So if</p> <p>19 you look at it, it is 174 versus 222 in</p> <p>20 estimated available for distribution. The</p> <p>21 cash number is the same. Then you will go</p> <p>22 through each part. So, you have got</p> <p>23 expenses, et cetera.</p> <p>24 If you are looking at just the</p> <p>25 proceeds, then you'd look at the 257</p>	<p>1 J. SEERY</p> <p>2 versus the 191.</p> <p>3 Q. Okay. So approximately</p> <p>4 \$67 million difference. Correct?</p> <p>5 A. Yes.</p> <p>6 Q. But then the expenses are going</p> <p>7 to be approximately 2 -- sorry. I am</p> <p>8 terrible at math. \$18 million less under</p> <p>9 the liquidation analysis. Is that right?</p> <p>10 A. That's correct.</p> <p>11 Q. So explain to me why you believe</p> <p>12 it's going to be 257 million, actually</p> <p>13 almost 258 million under the plan analysis</p> <p>14 as compared to the 192 under the</p> <p>15 liquidation analysis.</p> <p>16 MR. MORRIS: This is -- Clay,</p> <p>17 this is for the proceeds from the</p> <p>18 monetization of the asset sales?</p> <p>19 MR. TAYLOR: Correct. Kind of</p> <p>20 what I will call line 2.</p> <p>21 A. The difference between those is</p> <p>22 what we think we can do managing the</p> <p>23 assets and being able to put them through</p> <p>24 a longer period, being able to access the</p> <p>25 market at more appropriate times as</p>

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<p>1 J. SEERY</p> <p>2 opposed to simply running a quick fire</p> <p>3 sale. So we think we will be able to</p> <p>4 generate more proceeds through taking our</p> <p>5 time with those assets, looking for right</p> <p>6 opportunities in the market as opposed to</p> <p>7 hitting whatever the market brings.</p> <p>8 MR. MORRIS: I renew my request</p> <p>9 to stipulate now, Clay.</p> <p>10 Q. Is the assumption made that a</p> <p>11 Chapter 7 trustee could not conduct an</p> <p>12 orderly wind-down?</p> <p>13 A. The assumption is made that the</p> <p>14 Chapter 7 trustee will not conduct an</p> <p>15 orderly wind-down. It will conduct a</p> <p>16 Chapter 7 liquidation swiftly.</p> <p>17 Q. And is it Highland's position</p> <p>18 that a Chapter 7 trustee could not take on</p> <p>19 the same roles and conduct an orderly</p> <p>20 wind-down?</p> <p>21 A. We don't think --</p> <p>22 MR. MORRIS: Objection to form</p> <p>23 of the question.</p> <p>24 MR. TAYLOR: Hold on one second,</p> <p>25 Mr. Seery. Mr. Morris, I couldn't</p>	<p>1 J. SEERY</p> <p>2 hear your objection.</p> <p>3 MR. MORRIS: Just objection to</p> <p>4 the form of the question.</p> <p>5 Q. Mr. Seery, can you answer the</p> <p>6 question if you can?</p> <p>7 A. We assume that a Chapter 7</p> <p>8 trustee would not do that. They would not</p> <p>9 try to operate the business as we do in</p> <p>10 our reorganization plan.</p> <p>11 Q. Have you conducted any due</p> <p>12 diligence as to whether a Chapter 7</p> <p>13 trustee could, under the code, conduct an</p> <p>14 orderly wind-down?</p> <p>15 A. Due diligence? No.</p> <p>16 MR. MORRIS: Object to form of</p> <p>17 the question.</p> <p>18 Q. Is it fair to say that is a</p> <p>19 naked assumption?</p> <p>20 MR. MORRIS: Objection to form</p> <p>21 of the question.</p> <p>22 A. Not fair.</p> <p>23 Q. What is not fair about that?</p> <p>24 A. The way you phrased your</p> <p>25 assumption.</p>
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<p>1 J. SEERY</p> <p>2 Q. It's Highland's position that a</p> <p>3 Chapter 7 trustee would not conduct an</p> <p>4 orderly wind-down I believe you stated.</p> <p>5 Is that correct?</p> <p>6 A. Correct.</p> <p>7 Q. Do you have any opinion as to</p> <p>8 whether a Chapter 7 trustee could conduct</p> <p>9 an orderly wind-down?</p> <p>10 A. Yes.</p> <p>11 Q. What is that opinion?</p> <p>12 A. I don't think he could.</p> <p>13 Q. And why not?</p> <p>14 A. I think the business is too</p> <p>15 complicated, there is too many moving</p> <p>16 parts, there is too much risk of</p> <p>17 litigation from your client and others who</p> <p>18 are controlled by your client, and the</p> <p>19 Chapter 7 trustee would have difficulty</p> <p>20 coming into this situation and trying to</p> <p>21 manage these assets in an orderly way and</p> <p>22 would opt instead to liquidate them in the</p> <p>23 way most chap -- trustees in most Chapter</p> <p>24 7 proceedings are conducted.</p> <p>25 Q. Have you conducted any</p>	<p>1 J. SEERY</p> <p>2 interviews with potential Chapter 7</p> <p>3 trustees to come to that conclusion?</p> <p>4 A. No.</p> <p>5 Q. What is the factual basis by</p> <p>6 which you came to that conclusion?</p> <p>7 A. My experience and the experience</p> <p>8 of the professionals in the case, both in</p> <p>9 term of this case and our experience</p> <p>10 outside of the case.</p> <p>11 Q. I am going to direct your</p> <p>12 attention to --</p> <p>13 MR. TAYLOR: Bryan, if you would</p> <p>14 pull it up.</p> <p>15 Q. You probably have it there in</p> <p>16 front of you, Mr. Seery. Footnote 1,</p> <p>17 where it says "assumes a Chapter 7 trustee</p> <p>18 will not be able to achieve the same sale</p> <p>19 proceeds as Claimant trustee."</p> <p>20 You would agree with me, would</p> <p>21 you not, that it uses the word "assumes."</p> <p>22 Correct?</p> <p>23 A. Correct.</p> <p>24 Q. The word "assumes" generally</p> <p>25 means that there has not been an analysis</p>

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1 J. SEERY
2 conducted regarding that. Would you agree
3 with me?
4 MR. MORRIS: Objection to form
5 of the question.
6 A. I would not agree with you.
7 Q. Then why did you use the word
8 "assume"?
9 MR. MORRIS: Objection to form
10 of the question.
11 A. Because it is an assumption.
12 Q. Why don't you explain to the
13 court and me what you mean by the word
14 "assumes" then?
15 MR. MORRIS: Objection to the
16 form of the question.
17 A. What I believe the word
18 "assumes" means? I believe it is a thing
19 or fact that one puts into an analysis
20 based upon experience and it is presumed
21 to carry through the analysis irrespective
22 of what actually happens. Typically with
23 projections, because they are a prediction
24 of what may happen in the future, you may
25 not have hard facts as to what will happen

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1 J. SEERY
2 really quick. Page 174.
3 Do you see that, Mr. Seery, the
4 third line?
5 A. Tell me what you want to look
6 at.
7 Q. Estimated expenses through final
8 distribution in liquidation analysis.
9 A. Yes, I see that.
10 Q. I am going to represent to
11 you -- but we can pull it up on the screen
12 if you would like -- that the January
13 liquidation analysis shows approximately
14 \$41.5 million in estimated expenses to a
15 Chapter 7 trustee, so approximately
16 \$5.2 million more.
17 A. Yes.
18 Q. Do you know why that number
19 changed? What were the inputs?
20 A. Off the top of my head, I don't
21 recall the specific inputs that would have
22 that cost. I'd have to go back and check
23 in the underlying models.
24 Q. And that would be available to
25 anybody who was curious about that through

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1 J. SEERY
2 because predicting the future is actually
3 difficult.
4 So, we use assumptions, and they
5 are not based on nothing. They are
6 usually based on facts. We do it in
7 mathematics as well.
8 Q. Mr. Seery, do you have both the
9 November and the January plan analysis
10 versus liquidation analysis in front of
11 you?
12 A. No.
13 Q. I believe you have one of those
14 in hard copy in front of you. Is that
15 correct?
16 A. I don't have any hard copy in
17 front of me. I have it on the screen.
18 Q. In the November analysis, the
19 liquidation analysis shows that the
20 estimated expenses through final
21 distribution would be approximately 36
22 million. Do you see that?
23 A. I don't see that because that is
24 the one I don't have on the screen.
25 Q. We are getting that up for you

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1 J. SEERY
2 the roll-ups? You could ascertain why it
3 is \$5.2 million more?
4 A. I don't think we are going to
5 make the backup available to anybody who
6 is curious, no.
7 Q. Well, to any reviewing party who
8 is allowed to review it, would viewing
9 those roll-ups make it clear?
10 A. I think you'd be able to figure
11 it out. I don't know whether it would be
12 made clear. Depends on the skill set of
13 the reviewing party.
14 Q. Fair enough.
15 You testified earlier regarding
16 your experience with Chapter 7 trustees.
17 When was the last time you had an
18 experience with a Chapter 7 trustee?
19 A. 2009.
20 Q. So 13 years ago? 12? Is that
21 correct?
22 A. Let me make sure. One came to
23 mind. I want to make sure there are no
24 others.
25 There may be some others in

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<p>1 J. SEERY</p> <p>2 there. That one jumped out because it was</p> <p>3 big.</p> <p>4 Q. What case was that in?</p> <p>5 A. Lehman brokerage.</p> <p>6 Q. What was your role in that case?</p> <p>7 A. I was one of four or five people</p> <p>8 responsible for selling, chiefly</p> <p>9 responsible for selling Lehman to</p> <p>10 Barclays.</p> <p>11 Q. There was a Chapter 7 trustee in</p> <p>12 the Lehman case?</p> <p>13 A. There was a SIPC trustee, which</p> <p>14 I think is very similar rules with respect</p> <p>15 to the assets that weren't sold from the</p> <p>16 broker-dealer. And then there was a</p> <p>17 Creditors' Committee and reorg of the</p> <p>18 holding company.</p> <p>19 Q. How long did that SIPC trustee</p> <p>20 take to wind down the affairs and assets</p> <p>21 he or she was responsible for?</p> <p>22 A. The assets were distributed and</p> <p>23 liquidated really quickly. Distribution</p> <p>24 might have taken some time. Litigation</p> <p>25 took, I think, about seven years for the</p>	<p>1 J. SEERY</p> <p>2 SIPC trustee.</p> <p>3 Q. The SIPC trustee was in place</p> <p>4 for seven years?</p> <p>5 A. Around that amount of time.</p> <p>6 Again, most of the assets from the</p> <p>7 broker-dealer were sold to Barclays, and</p> <p>8 the SIPC trustee then monetized the</p> <p>9 remaining assets very quickly and then</p> <p>10 engaged in litigation.</p> <p>11 Q. That sale to Barclays was a bulk</p> <p>12 sale of basically all the non-litigation</p> <p>13 assets that Lehman held?</p> <p>14 A. No.</p> <p>15 Q. What did they not sell to</p> <p>16 Barclays then?</p> <p>17 A. It's way more complicated than</p> <p>18 that.</p> <p>19 Q. So it's even more complicated</p> <p>20 than this case?</p> <p>21 A. Exceedingly.</p> <p>22 Q. That was the last time you dealt</p> <p>23 with a Chapter 7 trustee or one</p> <p>24 substantially similar to this?</p> <p>25 A. I think so. I had dealings in</p>
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<p>1 J. SEERY</p> <p>2 MF Global, in that litigation, which was a</p> <p>3 similar trustee. That was probably a</p> <p>4 little bit later than the Lehman case in</p> <p>5 terms of my investments and involvement.</p> <p>6 And I don't recall any others post that</p> <p>7 amount of time.</p> <p>8 Q. I am going to compare and</p> <p>9 contrast the November liquidation and plan</p> <p>10 analysis to January's. Specifically</p> <p>11 focusing on Class 8.</p> <p>12 MR. TAYLOR: Bryan, if you can</p> <p>13 pull up November.</p> <p>14 A. I think you have November up.</p> <p>15 Q. Sorry. I wasn't looking at the</p> <p>16 screen. I was looking at my notes. I was</p> <p>17 unaware it was still up.</p> <p>18 The plan analysis says there is</p> <p>19 \$176 million worth of claims for Class 8,</p> <p>20 general unsecured claims. Correct?</p> <p>21 A. That is what it says, yes.</p> <p>22 Q. And in January that number was</p> <p>23 changed to 313.5 million. Correct?</p> <p>24 A. For Class 8 unsecureds, I have</p> <p>25 it in front of me. Yes.</p>	<p>1 J. SEERY</p> <p>2 Q. You would agree with me, would</p> <p>3 you not, that that is the single largest</p> <p>4 change in this liquidation analysis from</p> <p>5 November to January. Correct?</p> <p>6 A. I will accept your</p> <p>7 representation.</p> <p>8 Q. In November, under the</p> <p>9 liquidation analysis, you believe that</p> <p>10 unsecured creditors received 62.6 cents on</p> <p>11 the dollar. Correct?</p> <p>12 A. That is in the January one.</p> <p>13 Q. No. Actually, let's go ahead</p> <p>14 and --</p> <p>15 A. I am sorry. The liquidation</p> <p>16 analysis?</p> <p>17 Q. Yes. Sorry. I thought I said</p> <p>18 that. If I did not, I apologize.</p> <p>19 A. Yes, 62.6.</p> <p>20 Q. And as we sit here today, under</p> <p>21 Highland's revised numbers, what does</p> <p>22 Highland project unsecured creditors are</p> <p>23 going to receive?</p> <p>24 A. 48.16.</p> <p>25 Q. And under the plan analysis what</p>

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1 J. SEERY
2 are they going to receive?
3 A. On the one we just filed?
4 62.14.
5 Q. So, you are now projecting that
6 unsecured creditors are going to receive
7 less than what you were predicting under
8 the liquidation plan analysis performed in
9 November. Correct?
10 A. A little bit, yes.
11 Q. Again, you haven't resolicited
12 this plan; correct?
13 A. No.
14 Q. I am curious. A few months ago
15 you thought the spread between what the
16 plan could achieve as far as gross
17 proceeds was approximately 190,000 --
18 sorry. \$190 million. Is that correct?
19 A. If you could pull up the
20 November to determine what you are asking
21 me?
22 Q. I am looking at line 2,
23 estimated proceeds from monetization.
24 Under the plan analysis it shows 190
25 million. Right?

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1 J. SEERY
2 Q. It is approximately \$25 million
3 greater. Correct?
4 A. Yes.
5 Q. What changed in two months to
6 make those recoveries \$25 million greater
7 under a plan rather than liquidation?
8 A. Both the assets in terms of
9 their values and the view of the markets.
10 Q. I would ask you to dig a little
11 deeper than that and provide a little more
12 color.
13 A. Okay.
14 Q. So what accounts for the
15 \$25 million worth of difference in the
16 spread?
17 A. Certain of the assets jumped up
18 in value. Other assets, we have a more
19 robust view of value because of the
20 conditions that we see in the market going
21 forward.
22 Q. So the total asset value
23 increased in your opinion. Correct?
24 A. The total asset value increased
25 as well as the projection for how the

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1 J. SEERY
2 A. Correct.
3 Q. And under liquidation analysis,
4 it shows 150 million. Right?
5 A. Correct.
6 Q. So the spread was 40 million
7 bucks. Right?
8 A. That is the difference between
9 those numbers, yes.
10 Q. I call it the spread, right, the
11 difference between how much better you
12 think the plan would do rather than a
13 liquidation?
14 A. In estimated proceeds from
15 monetization of assets, yes.
16 Q. In January, if we pull that up,
17 the same line, now under a plan you could
18 achieve 258 million but that a Chapter 7
19 trustee could only recover 191 million.
20 Now the spread is \$65 million, so that
21 spread increased from 40 million to 65
22 million. You would agree that the
23 documents show that. Correct?
24 A. Yes. The difference in those
25 numbers is different and it's greater.

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1 J. SEERY
2 markets look on a forward basis.
3 Q. And why is it that you believe
4 it is now \$25 million more of what you
5 could receive under a plan rather than a
6 liquidation?
7 MR. MORRIS: Objection to the
8 form of the question.
9 A. I think I just answered that.
10 That asset values went up higher and the
11 projection for the future looks better.
12 Q. And why is it that a Chapter 7
13 trustee could not capture that increased
14 value?
15 A. Because a Chapter 7 trustee, in
16 our opinion and our assumption, moves to
17 liquidate the assets quickly and does not
18 have the ability, therefore, to capture
19 that forward projection of market value
20 that we think is more robust.
21 Q. We covered this a little bit
22 before. Other than your prior experience
23 with Chapter 7 trustees, did you conduct
24 any empirical data or go through any
25 empirical data to justify the difference

<p style="text-align: right;">Page 158</p> <p>1 J. SEERY</p> <p>2 between liquidation versus the plan</p> <p>3 analysis?</p> <p>4 A. In respect of doing the work for</p> <p>5 this?</p> <p>6 Q. Sorry. That was a terrible</p> <p>7 question. I will rephrase.</p> <p>8 Did you conduct any interviews</p> <p>9 with Chapter 7 trustees or otherwise</p> <p>10 conduct due diligence to justify the</p> <p>11 spread between 257 and the 191 in your</p> <p>12 most recent projections?</p> <p>13 A. I object to the use of "due</p> <p>14 diligence." That is not the right use of</p> <p>15 that term.</p> <p>16 Did I interview trustees? No.</p> <p>17 Q. What analysis did you perform to</p> <p>18 get to the spread?</p> <p>19 MR. MORRIS: Objection to the</p> <p>20 form of the question.</p> <p>21 A. I think I said it, but we looked</p> <p>22 at each of the assets. We considered it</p> <p>23 in the context of its now current value as</p> <p>24 well as our projections with respect to</p> <p>25 the prospects in the market over the</p>	<p style="text-align: right;">Page 159</p> <p>1 J. SEERY</p> <p>2 foreseeable time period, which we used as</p> <p>3 an assumption here over the next two</p> <p>4 years.</p> <p>5 Q. You testified regarding your</p> <p>6 involvement with MF Global and the Chapter</p> <p>7 trustee. Can you give me a little</p> <p>8 background on that case?</p> <p>9 A. It was liquidation of a</p> <p>10 commodity broker-dealer. We invested, we</p> <p>11 bought securities in the case and traded</p> <p>12 them.</p> <p>13 Q. Were these broker-dealers that</p> <p>14 held regularly marketable securities?</p> <p>15 A. It was a broker-dealer that was</p> <p>16 a commodity broker-dealer. So, they had</p> <p>17 debt and we traded in its debt.</p> <p>18 Q. How long was the Chapter 7</p> <p>19 trustee in place in the MF Global case?</p> <p>20 A. I don't recall. The assets were</p> <p>21 very swiftly litigated and it was a</p> <p>22 litigation case. In both of those cases</p> <p>23 the assets were blown out. They got blown</p> <p>24 out quickly, and then it's a litigation</p> <p>25 case. So, you are betting on timing,</p>
<p style="text-align: right;">Page 160</p> <p>1 J. SEERY</p> <p>2 distributions and recoveries in</p> <p>3 litigations.</p> <p>4 Q. Mr. Seery, let's just go back</p> <p>5 briefly. I wanted to pick up on a line of</p> <p>6 questioning where you were asked about, by</p> <p>7 Mr. Draper, about the total operational</p> <p>8 expenses versus what you would receive in</p> <p>9 income. I am going to try to get to where</p> <p>10 I think you guys were talking over each</p> <p>11 other a little bit.</p> <p>12 MR. TAYLOR: If you could pull</p> <p>13 up, Bryan, the November profit and</p> <p>14 loss that shows all the way to</p> <p>15 November 2022? The total of 2022</p> <p>16 where it rolls everything up, the next</p> <p>17 page down.</p> <p>18 Q. Mr. Seery, just to I make sure I</p> <p>19 understand this document correctly, this</p> <p>20 is the November projections and the total</p> <p>21 operating expenses there are going to be</p> <p>22 \$18 million. Correct?</p> <p>23 A. 18.468. Yes.</p> <p>24 Q. In the January report or</p> <p>25 analysis the total operating expenses are</p>	<p style="text-align: right;">Page 161</p> <p>1 J. SEERY</p> <p>2 going to be approximately \$20.5 million</p> <p>3 higher at \$38.8 million. Correct?</p> <p>4 A. 38.8. Yes.</p> <p>5 Q. So an increase of \$20.5 million.</p> <p>6 Correct?</p> <p>7 A. I will take your math.</p> <p>8 Q. That is a dangerous way to do it</p> <p>9 but I think it's right.</p> <p>10 A. That is what I have been seeing.</p> <p>11 Q. So the total revenue in November</p> <p>12 the Debtor is going to be able to realize</p> <p>13 is \$2 million. Correct? For management</p> <p>14 fees, shared services fees and other</p> <p>15 income?</p> <p>16 A. Which plan are you looking at?</p> <p>17 Q. I am looking at the November.</p> <p>18 A. Total revenue, 2.154.</p> <p>19 Q. Now going to the January one, we</p> <p>20 made a change in assumptions here, right?</p> <p>21 A. Yes.</p> <p>22 Q. With that change in assumption</p> <p>23 you are going to be able to realize</p> <p>24 approximately 6.1 million more dollars,</p> <p>25 correct, in gross revenue?</p>

<p style="text-align: right;">Page 162</p> <p>1 J. SEERY</p> <p>2 A. If that is the delta. I didn't</p> <p>3 pay attention to the list.</p> <p>4 Q. 2.1 versus 8.2.</p> <p>5 A. That is fine.</p> <p>6 Q. So \$6.1 million increased gross</p> <p>7 revenue. Right?</p> <p>8 A. Correct.</p> <p>9 Q. But you are going to have to</p> <p>10 spend 20.5 million more dollars because of</p> <p>11 those changes in assumptions. Correct?</p> <p>12 A. Not to do with the revenue but</p> <p>13 because of the other changes in</p> <p>14 assumptions; correct.</p> <p>15 Q. What are those other changes in</p> <p>16 assumptions?</p> <p>17 A. They are built in throughout the</p> <p>18 model. I think -- I think we have given</p> <p>19 you a summary of it. If you want to walk</p> <p>20 through line by line, we can do that. You</p> <p>21 guys seem to keep driving at the CLOs and</p> <p>22 management fees. They are profitable.</p> <p>23 Very. You just have trouble getting there</p> <p>24 on the question.</p> <p>25 Q. So how much of that</p>	<p style="text-align: right;">Page 163</p> <p>1 J. SEERY</p> <p>2 \$20.5 million of increased costs are</p> <p>3 attributable to the cost that it takes --</p> <p>4 or for the income stream generated by</p> <p>5 these management and shared service fees</p> <p>6 and other income, the increase of</p> <p>7 6.1 million?</p> <p>8 A. I don't understand your</p> <p>9 question.</p> <p>10 Q. Let me try it another way.</p> <p>11 Of that increased cost of</p> <p>12 \$20.5 million, how much of that expense is</p> <p>13 driven by the costs -- how much of the</p> <p>14 \$20.5 million of cost is needed to</p> <p>15 generate that extra 6.1 million in</p> <p>16 revenue?</p> <p>17 A. Over that period, probably about</p> <p>18 4 million. Somewhere in the 3 to 4</p> <p>19 million range.</p> <p>20 Q. So you believe it is positive</p> <p>21 cash flow 2 to \$3 million in making those</p> <p>22 changes of assumptions?</p> <p>23 A. Very conservatively, yes.</p> <p>24 Q. And what are those other</p> <p>25 \$15 million worth of increased costs</p>
<p style="text-align: right;">Page 164</p> <p>1 J. SEERY</p> <p>2 generated from?</p> <p>3 A. We'd have to go through line by</p> <p>4 line. But there is a significant amount</p> <p>5 of more cost that we put into the</p> <p>6 management of the assets that have both</p> <p>7 more of a robust ability to manage the</p> <p>8 assets as well as to litigate with the</p> <p>9 parties we expect to be fighting with.</p> <p>10 MR. TAYLOR: So, Mr. Seery, I am</p> <p>11 going to take a very, very brief break</p> <p>12 just to confer with my colleagues,</p> <p>13 probably five minutes. And I think I</p> <p>14 probably lied to you in that I think I</p> <p>15 am at the end of my questioning. I</p> <p>16 want to confer with them and make sure</p> <p>17 I have covered everything we want to</p> <p>18 cover.</p> <p>19 I currently have the time at</p> <p>20 12:44. If we can reconvene, if</p> <p>21 everybody would stay by their computer</p> <p>22 for three minutes and just let me</p> <p>23 confer with them really quick, I</p> <p>24 believe I will conclude my questioning</p> <p>25 subject to reexamining based upon</p>	<p style="text-align: right;">Page 165</p> <p>1 J. SEERY</p> <p>2 whatever Mr. Rukavina may ask or your</p> <p>3 own counsel may ask.</p> <p>4 MR. RUKAVINA: Wait for me to</p> <p>5 come back. It will be less than five</p> <p>6 minutes. I will have less than 30. I</p> <p>7 am prepared.</p> <p>8 MR. TAYLOR: We'll reconvene in</p> <p>9 10 to 15.</p> <p>10 (Recess.)</p> <p>11 MR. TAYLOR: Mr. Seery, thank</p> <p>12 you for allowing me that brief break.</p> <p>13 I have no further questions pending</p> <p>14 asking some follow-up questions</p> <p>15 depending on what further testimony</p> <p>16 you may have in this deposition. I</p> <p>17 might have to jump back in at the end</p> <p>18 but I will wait until the end. With</p> <p>19 that, I have no further questions</p> <p>20 pending that reservation.</p> <p>21 MR. RUKAVINA: Mr. Seery, this</p> <p>22 is Davor Rukavina.</p> <p>23 EXAMINATION BY</p> <p>24 MR. RUKAVINA:</p> <p>25 Q. A few questions about those</p>

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2 updated projections from yesterday if you

3 have them in front of you. Assumption C

4 is that all demand notes are collected in

5 the year 2021, three term notes defaulted

6 and have been demanded, et cetera.

7 Can you identify the three term

8 notes that are discussed in that?

9 A. Let me just see. Assumption --

10 I believe it is the \$24 million NexPoint

11 note, and I forget if it is two HCMFA

12 notes. I thought they were demand. Off

13 the top of my head, those are the three I

14 recall. Certainly the largest was

15 NexPoint.

16 Q. Are you meaning HCMFA?

17 A. Did I get it wrong? Highland

18 Capital Management Financial Advisors.

19 Whatever they call themselves.

20 Q. That is what I understood.

21 You anticipate that all three of

22 those notes will be collected in the year

23 2021?

24 A. Yes.

25 Q. Are these the three notes that

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1 J. SEERY

2 insolvency or bankruptcy procedures?

3 A. Yes.

4 Q. And you are still not prepared

5 to discount them, or you have already

6 taken that into account when you did not

7 discount them?

8 A. There is a ton of assets hidden

9 behind them that have been siphoned off

10 that we are highly confident we would get

11 to rather quickly.

12 Q. Are you talking about potential

13 fraudulent transfers?

14 A. Yes.

15 Q. Assumption F, as in Frank,

16 discusses the Highland bonus plan. It

17 says "accrual for employee bonuses as of

18 January 2021 are reversed and not paid."

19 Do you see that?

20 A. Yes.

21 Q. Do you recall the approximate

22 amount of that accrual?

23 A. I don't recall, no.

24 Q. Is it more than \$20 million?

25 A. I don't believe it was. From

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1 J. SEERY

2 the Debtor has recently filed adversary

3 proceedings regarding?

4 A. I think those are three of the

5 notes. I think we filed for demand notes

6 as well.

7 Q. Do these projections include any

8 discount for those three notes based on

9 potential uncollectability?

10 A. No. I don't believe -- there is

11 no uncollectability discount for the

12 demanded notes.

13 Q. Has the Debtor undertaken an

14 analysis of the collectability of those

15 three notes?

16 A. Only from a top-level view; yes.

17 Q. Do you have an opinion on that?

18 A. Yes. They are going to be

19 collectible.

20 Q. Including the Highland Capital

21 Management Fund Advisors one?

22 A. Oh, yes.

23 Q. Has the Debtor considered what

24 would happen if the collection of those

25 notes drove those Defendants into

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1 J. SEERY

2 the prior question, I was thrown some

3 numbers that Dondero claimed it was some

4 large amount. I don't think that's good

5 faith. Obviously, or maybe not so

6 obviously, if he ran his company and

7 siphoned off that much money, what 20

8 million -- it would be kind of weird to

9 stiff your employees for that amount. I

10 don't recall the exact amount.

11 Q. Why would Mr. Dondero siphoning

12 off money have anything to do with

13 accruals for employee bonuses?

14 A. Typically when you have the

15 cash, you pay the employees.

16 Q. Are you aware of how this

17 alleged bonus plan was intended to

18 function?

19 A. Yes.

20 Q. What is your understanding of

21 it?

22 A. My understanding is that they

23 deferred significant amounts of cash that

24 they otherwise would have potentially paid

25 employees and they had the ability to

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1 J. SEERY

2 terminate the payment of that amount at

3 any time except for debt of the employee.

4 Q. Is it your understanding that

5 those bonus payments were always intended

6 to be paid out over time or were they

7 supposed to be paid in lump sums whenever

8 they might otherwise be payable?

9 MR. MORRIS: Objection to form

10 of the question.

11 A. My understanding of the plan is

12 it gave the company complete flexibility

13 to pay them or not pay them. I think by

14 virtue of what is done in this case, there

15 was never an intention to pay them.

16 Q. That accrual that we mentioned,

17 was that an accrual on the books and

18 records of the Debtor?

19 A. I don't believe so, no.

20 Q. Do you know where, if anywhere,

21 that was accrued?

22 A. Certainly in the individual

23 employee's account line item that

24 personnel kept. But it wasn't something

25 that I would find on the balance sheet.

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1 J. SEERY

2 A. Yes.

3 Q. Do you remember approximately

4 where?

5 A. In the personnel files.

6 Q. Okay. Is it your opinion that

7 that accrual and claims related to it are

8 worth zero?

9 A. Yes.

10 Q. And I take it that, therefore,

11 when you are estimating distributions to

12 Class 8 general unsecured claims, you are

13 assuming again zero for those accruals and

14 claims?

15 A. Yes.

16 Q. Using round numbers, the

17 projections estimate 194 million-plus

18 available to Class 8. If those employee

19 claims based on that accrual were allowed

20 in any amount, then whatever that amount

21 would be would come off of that 194

22 million. Is that accurate?

23 A. It would come off? No. The

24 amount available for distribution would be

25 the same, but the amount to be distributed

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1 J. SEERY

2 Q. So the individual employee would

3 keep that, but the Debtor's books and

4 records would not also reflect some

5 written accrual?

6 MR. MORRIS: Object to form of

7 the question.

8 Q. Let me ask again. You mentioned

9 that you wouldn't find it on the balance

10 sheet. Correct?

11 A. Correct.

12 Q. But I also asked whether to your

13 knowledge an accrual is kept anywhere on

14 the Debtor's books and records. Do you

15 remember me asking that?

16 A. Yes.

17 Q. I believe you said no. Do you

18 stand by that answer?

19 A. I did not say that.

20 Q. Then let me ask it again. I

21 apologize for misunderstanding.

22 Would, to your knowledge, an

23 accrual for these bonus payments have been

24 kept anywhere by the Debtor on its books

25 and records?

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2 to would go up.

3 Q. I apologize. You are correct.

4 If those employee accrual claims were

5 allowed in any amount, then the estimated

6 distribution to Class 8 creditors would go

7 down from 62.14 percent. Is that correct?

8 A. That's correct.

9 Q. Assumption I, as in India, is

10 that the litigation trustee budgeted

11 6.5 million. Does that include your

12 estimated compensation?

13 A. I am not the litigation trustee,

14 so no, it does not.

15 Q. I apologize. That's just for

16 the litigation subtrust?

17 A. Correct.

18 Q. Do you know whether that

19 includes potential fees and expenses of

20 counsel that would be prosecuting the

21 litigation?

22 A. This amount is the amount that

23 we expect from our projections to

24 distribute to the litigation trustee. I

25 assume that the litigation trustee will

<p style="text-align: right;">Page 174</p> <p>1 J. SEERY</p> <p>2 spend infinitely more than that.</p> <p>3 Q. I understand. Do you agree</p> <p>4 that, therefore, the litigation trustee</p> <p>5 will have to retain counsel on a</p> <p>6 contingency basis if he will have to spend</p> <p>7 infinitely more than that?</p> <p>8 A. Not necessarily, no.</p> <p>9 Q. Why not?</p> <p>10 A. The Claimant trust could make</p> <p>11 additional distributions if the Oversight</p> <p>12 Committee permitted it.</p> <p>13 Q. Got it.</p> <p>14 Help me, please, if I am dense,</p> <p>15 but where on these projections, if</p> <p>16 anywhere, are the estimated net proceeds</p> <p>17 of the litigation trust included in a</p> <p>18 distribution to general unsecured</p> <p>19 creditors?</p> <p>20 A. They are not.</p> <p>21 Q. So is it fair to say that any</p> <p>22 net distributions from that litigation</p> <p>23 trust would increase the 62.14 percent</p> <p>24 estimated distribution?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 175</p> <p>1 J. SEERY</p> <p>2 Q. Do you have an estimate of how</p> <p>3 much that could be increased by or what</p> <p>4 the net value of those litigation causes</p> <p>5 of action might be?</p> <p>6 A. I do not.</p> <p>7 Q. Assumption "O" and other matters</p> <p>8 in here discuss the 85-cent payout to</p> <p>9 Class 7. You are familiar with that</p> <p>10 85-cent payout. Correct?</p> <p>11 A. Yes.</p> <p>12 Q. Why is there a difference in the</p> <p>13 proposed 85 percent to Class 7 and</p> <p>14 62 percent to Class 8?</p> <p>15 A. The structure of the plan.</p> <p>16 Q. I understand correctly that</p> <p>17 Class 7 consists of convenience class</p> <p>18 claims?</p> <p>19 A. Generally claims that were</p> <p>20 liquidated claims as of the time that we</p> <p>21 put the plan together.</p> <p>22 Q. But they are in an amount of</p> <p>23 \$1 million or less? Am I right about</p> <p>24 that?</p> <p>25 A. That's correct.</p>
<p style="text-align: right;">Page 176</p> <p>1 J. SEERY</p> <p>2 Q. So then tell me, to your</p> <p>3 understanding, how the \$1 million number</p> <p>4 was determined and why Class 7 is a</p> <p>5 separate class?</p> <p>6 A. It was negotiated with the</p> <p>7 Creditors' Committee.</p> <p>8 Q. Is it inconvenient to the</p> <p>9 Claimant trust to have to deal with those</p> <p>10 claims post-confirmation?</p> <p>11 MR. MORRIS: Objection to form</p> <p>12 of the question.</p> <p>13 A. Did you say is it inconvenient?</p> <p>14 Q. Yes, sir.</p> <p>15 A. No. It is very convenient.</p> <p>16 Q. Well, maybe I am wrong, but</p> <p>17 isn't Class 7 called convenience class</p> <p>18 claims?</p> <p>19 A. That's its name.</p> <p>20 Q. Okay. But it is not really done</p> <p>21 for convenience purposes; it is done as a</p> <p>22 negotiation with the Creditors' Committee?</p> <p>23 Is that your answer?</p> <p>24 MR. MORRIS: Objection to form</p> <p>25 of the question.</p>	<p style="text-align: right;">Page 177</p> <p>1 J. SEERY</p> <p>2 A. I think it is very convenient,</p> <p>3 using the conventional definition of the</p> <p>4 word, to deal with Class 7 the way it is</p> <p>5 structured.</p> <p>6 Q. And why is it convenient, sir?</p> <p>7 A. Because they will be paid off</p> <p>8 early on in the case, once it's exited.</p> <p>9 Q. And that was one of the</p> <p>10 negotiated points of the committee?</p> <p>11 A. Yes.</p> <p>12 Q. Would it be administratively</p> <p>13 inconvenient for the post-confirmation</p> <p>14 Claimant trust to have to deal with those</p> <p>15 claims?</p> <p>16 A. It would be more difficult. So,</p> <p>17 yes, I think it is fair to say it would be</p> <p>18 inconvenient.</p> <p>19 Q. Why would it be more difficult?</p> <p>20 A. There would be more to do.</p> <p>21 Q. Do you have a ballpark of how</p> <p>22 many claims are in Class 7, by number that</p> <p>23 is? In other words, I know it is 10</p> <p>24 million or so in amount, but do you have a</p> <p>25 ballpark estimate of the number?</p>

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2 A. I don't recall right now.

3 Q. Is it fair to say that it is

4 less than a hundred?

5 A. I believe that is fair to say.

6 Q. And you are saying that it would

7 be inconvenient for the Claimant trust to

8 have to deal with carrying these claims on

9 its books and making distributions to

10 these creditors in the future?

11 A. Yes.

12 Q. And how was the \$1 million

13 amount fixed at?

14 A. It was negotiated.

15 MR. MORRIS: Objection. Asked

16 and answered.

17 Q. Negotiated with the Creditors'

18 Committee?

19 A. Yes.

20 Q. Is that the extent of the reason

21 for the \$1 million?

22 A. I don't understand your

23 question.

24 Q. Do you recall who proposed the

25 million dollar number, the Creditors'

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1 J. SEERY

2 we'd have to deal with to administer the

3 estate.

4 Q. Have you undertaken or anyone

5 for you undertaken an analysis of how much

6 more work would be involved?

7 A. No.

8 Q. Have you undertaken or has

9 anyone for you undertaken an analysis of

10 the cost of that additional work?

11 A. No.

12 Q. Was there any particular

13 creditor on the Creditors' Committee that

14 you can think of that was really pushing

15 for this Class 7 \$1 million treatment, or

16 was that the committee as a whole?

17 A. It was the committee as a whole.

18 Q. I am still looking at these

19 projections, if that's a fair

20 characterization. I am now on the page

21 where it is plan analysis versus

22 liquidation analysis.

23 A. Which is the part where you are

24 having a problem with whether it is a fair

25 characterization?

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2 Committee or the Debtor?

3 A. I think initially -- not the

4 million dollar number. I think the Debtor

5 initially proposed the structure, to

6 bifurcate liquidated and unliquidated

7 claims, and we negotiated the amount. So

8 I don't recall the specific -- whether it

9 was a number we came up with or the

10 committee came up with.

11 Q. Was that number, was the basis

12 for that number administrative

13 convenience, or was it a negotiation with

14 the committee?

15 A. I don't recall the exact basis,

16 but it was all a negotiation.

17 Q. Can you tell the court what the

18 inconvenience, the administrative

19 inconvenience to the post-confirmation

20 Claimant trust would be if it had to

21 administer these Class 7 claims in

22 addition to Class 8 claims?

23 A. I will tell you; I don't know if

24 the court is on, but we can tell the court

25 next week. It will just be more work that

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2 Q. Sorry?

3 A. You said something about a fair

4 characterization. Was that just being

5 snide, or did you have something specific

6 you wanted to talk about?

7 Q. I am calling what was sent last

8 night the updated plan projections. Can I

9 call them that? Do you know what I am

10 talking about?

11 A. Yes. I think you used some

12 different phrase there, but that is okay.

13 Q. Forgive me not only for my

14 accent but for the electronic nature of

15 this. I am just trying to tell you where

16 I am looking.

17 I am looking at what is called

18 plan analysis versus liquidation analysis,

19 which you were asked about quite a bit

20 earlier today.

21 A. Yes.

22 Q. One of the line items under the

23 plan analysis is "estimated expenses

24 through final distribution" and it is

25 \$59 million and change. Do you see that?

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<p>1 J. SEERY</p> <p>2 A. Yes.</p> <p>3 Q. Can you point me to somewhere in</p> <p>4 these documents that that ties into?</p> <p>5 A. I am sorry. I don't understand</p> <p>6 what you mean, "ties into."</p> <p>7 Q. I apologize. What does the</p> <p>8 \$59 million consist of as far as other</p> <p>9 line items in these projections?</p> <p>10 A. That is the estimated expenses</p> <p>11 through the final distribution.</p> <p>12 Q. Is there, to your knowledge, a</p> <p>13 portion of these projections that</p> <p>14 separates that \$59 million discretely into</p> <p>15 its constituent parts?</p> <p>16 MR. MORRIS: Objection to the</p> <p>17 form of the question.</p> <p>18 A. In the P&L statement we break</p> <p>19 out the operating expenses versus the</p> <p>20 professional fees.</p> <p>21 Q. This projection estimates some</p> <p>22 \$10.5 million in administrative claims.</p> <p>23 Are you familiar with that?</p> <p>24 A. Yes.</p> <p>25 Q. I take it part of that is unpaid</p>	<p>1 J. SEERY</p> <p>2 professional fees?</p> <p>3 A. That's correct.</p> <p>4 Q. Is any part of that cure claims</p> <p>5 for the assumption of contracts?</p> <p>6 A. There may be a small amount in</p> <p>7 there that we have to cure but not</p> <p>8 significant.</p> <p>9 Q. Are you familiar with the</p> <p>10 administrative claim that my two advisor</p> <p>11 clients filed last week?</p> <p>12 A. Yeah. That's kind of funny.</p> <p>13 Yes.</p> <p>14 Q. I take it, because you think it</p> <p>15 is kind of funny and because you are</p> <p>16 smirking, you think those are bogus</p> <p>17 claims?</p> <p>18 A. I know they are bogus claims.</p> <p>19 Q. Are those claims valued at zero</p> <p>20 in this 10.5 million estimate?</p> <p>21 A. Zero -- I don't know if we have</p> <p>22 taken any positive for the fees we will</p> <p>23 probably see but we value them at zero.</p> <p>24 Q. Why are those bogus claims?</p> <p>25 A. Because they have no basis in</p>
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<p>1 J. SEERY</p> <p>2 fact.</p> <p>3 Q. So the allegation at least is</p> <p>4 that my clients made post-petition</p> <p>5 payments for employees that no longer</p> <p>6 existed? Are you aware of that</p> <p>7 allegation?</p> <p>8 A. I am very aware of the</p> <p>9 allegation and numerous other allegations</p> <p>10 that your clients have propounded that</p> <p>11 have no basis in fact and that you</p> <p>12 propound without having any basis in law.</p> <p>13 So yes, I have seen this a lot and will</p> <p>14 continue to see it. They only seemed to</p> <p>15 have to come up when there is a dispute</p> <p>16 around the plan. Kind of odd. Nobody</p> <p>17 complained earlier, but we'll continue.</p> <p>18 Q. To your opinion, what baseless</p> <p>19 allegations in law have I personally made?</p> <p>20 A. You accused me of breaching the</p> <p>21 Advisers Act.</p> <p>22 Q. Anything else?</p> <p>23 A. That seems pretty good. We can</p> <p>24 start there.</p> <p>25 Q. What allegations of fact that</p>	<p>1 J. SEERY</p> <p>2 are baseless have my clients made?</p> <p>3 A. I just named one.</p> <p>4 Q. Any more?</p> <p>5 A. There is lots more.</p> <p>6 Q. Can you name a couple?</p> <p>7 A. We'll get to it next week.</p> <p>8 Q. You are not prepared today to</p> <p>9 tell me what allegations the funds and</p> <p>10 advisors have had that are baseless in</p> <p>11 fact?</p> <p>12 A. Everything related to last</p> <p>13 week's testimony in front of the judge, as</p> <p>14 well as these bogus claims.</p> <p>15 Q. Okay.</p> <p>16 A. The claim that they are</p> <p>17 independent from Dondero, the claim that</p> <p>18 you are acting independent from Dondero.</p> <p>19 This is all bogus.</p> <p>20 Q. So to your understanding,</p> <p>21 anything that touches Dondero is bogus and</p> <p>22 done for litigation leverage. Is that</p> <p>23 accurate?</p> <p>24 A. That is what I have seen, as</p> <p>25 well as you.</p>

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1 J. SEERY

2 Q. Is that why you sent an email to

3 the independent board member Ethan on

4 Wednesday accusing the CCO of perjury?

5 A. No, that is not why I sent that.

6 Q. Why did you send that?

7 A. Because they had stuck their

8 head in the sand from a termination notice

9 that was sent on the service agreements

10 more than 60 days ago. They also knew

11 that their funds -- the advisor to their

12 funds were in default to HCFMA, yet this

13 board of directors never did anything to

14 plan for the future of this business.

15 They also knew that Dondero

16 resisted any transition, that they had

17 done nothing. They didn't file an 8-K,

18 they didn't post anything to their

19 website. The stocks trade retail with the

20 most illiquid assets.

21 That's why I sent it.

22 Q. I understand why you sent it but

23 you didn't answer my question. Why did

24 you feel the need to tell the board that

25 my CCO answers to that he committed

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1 J. SEERY

2 A. I thought he was. Yes.

3 Q. Did you expect that that email

4 would eventually get to him and that

5 allegation that he committed perjury?

6 A. No.

7 MR. MORRIS: Davor, I am going

8 to shut this down now. I appreciate

9 your interest in these questions.

10 There is nobody on the phone who

11 otherwise has an interest in these

12 questions. It has absolutely nothing

13 to do with confirmation, so I would

14 respectfully request that you move on.

15 MR. RUKAVINA: One more question

16 on that and then I will -- well, two

17 more questions.

18 Q. Prior to sending that email did

19 you have a telephone conference with

20 Ethan?

21 A. I did.

22 Q. My last question on this topic:

23 In that telephone conference, did you call

24 the K&L lawyers criminal lawyers?

25 A. I don't believe I said that, no.

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1 J. SEERY

2 multiple acts of perjury?

3 A. In my opinion he did, and I

4 think that the board of directors should

5 know that because, obviously, to me,

6 either they are complicit in it or they

7 haven't been advised of anything. And the

8 fact that they haven't notified investors

9 of the current condition of their funds is

10 quite scary.

11 Q. Did you intend that that board

12 do something with respect to your

13 statement that my client CCO committed

14 multiple acts of perjury?

15 A. I believe that they should.

16 Q. Did you know that he was still

17 in the middle of his testimony before

18 Judge Jernigan when you sent that email?

19 A. That is not correct.

20 Q. Do you not understand that I was

21 not done examining him when Tuesday's

22 hearing adjourned?

23 A. I did not understand that, no.

24 Q. You thought that he was done

25 with his testimony?

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1 J. SEERY

2 Q. Did you say anything similar to

3 that?

4 A. No --

5 MR. MORRIS: That is your second

6 question. You got it. Let's move on.

7 A. No, I don't believe so.

8 Q. Have you discussed with

9 Mr. Waterhouse whether my administrative

10 claim that I filed has any factual merit?

11 A. Only last --

12 MR. MORRIS: Objection to the

13 form of the question.

14 A. Only last night because we got a

15 subpoena -- or he got a subpoena.

16 Q. Prior to that, you did not

17 discuss with him whether my administrative

18 claim had any factual merit?

19 A. I don't believe so. Not the

20 administrative claim, no.

21 Q. Other than communications that

22 you have had with counsel, have you

23 discussed that administrative claim with

24 anyone else that might be able to tell you

25 whether it has or does not have any

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1 J. SEERY

2 factual merit?

3 A. I believe I have, but I am not

4 certain of it.

5 Q. Is it fair to conclude that you

6 believe that that claim is bogus because

7 Mr. Dondero is somehow involved with it?

8 MR. MORRIS: Objection to form

9 of the question.

10 A. I think I already answered it.

11 That is part of it, that he is directing

12 it and it is just made up out of thin air.

13 But these services have gone on. I talked

14 to the retail boards. I've had

15 negotiations and dealings with some of

16 these entities for a long time during the

17 case. It was never raised before.

18 These claims that something

19 happened now in the case that is different

20 than happened before and that they weren't

21 getting services are just solely

22 fabricated for the case. I suspect that

23 it's been done in a coordinated effort.

24 Q. Coordinated between whom?

25 A. Mr. Dondero and the operators at

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1 J. SEERY

2 Q. Do you know how that \$41 million

3 number was estimated?

4 A. We built it up on our assumption

5 of the expenses that would be required to

6 conduct a liquidation.

7 Q. That liquidation, does it assume

8 a Chapter 7?

9 A. It does.

10 Q. Do you know what the constituent

11 parts of that 41-and-a-half-million-dollar

12 estimate are?

13 A. I don't recall off the top of my

14 head, but I do know them, yes.

15 Q. So there is an analysis, do you

16 think it would include the Chapter 7

17 trustee's commission?

18 A. Yes.

19 Q. Do you think it would include

20 the Chapter 7 trustee's attorneys?

21 A. Yes.

22 Q. Do you think it would include

23 Chapter 7 trustee, other professionals

24 like accountants and tax advisors?

25 A. I believe it does, yes.

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1 J. SEERY

2 the funds, who work for Mr. Dondero.

3 Q. I apologize. You have seen my

4 administrative claim, right?

5 A. No.

6 MR. MORRIS: Davor, I am really

7 going to direct the witness not to

8 answer. We are done with your

9 administrative claim and his knowledge

10 of the administrative claim. He

11 answered the question as it relates to

12 the projections. There is no money in

13 the forecast for the payment of the

14 administrative claim. So, let's move

15 on.

16 MR. RUKAVINA: Ms. Court

17 Reporter, did you hear the answer

18 "no"?

19 COURT REPORTER: I do have the

20 answer "no" on the record.

21 Q. The liquidation analysis from

22 yesterday estimates expenses through final

23 distribution in a liquidation at

24 \$41,488,000. Are you familiar with that?

25 A. Yes.

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1 J. SEERY

2 Q. And do you know the factual

3 basis from which those constituent numbers

4 were estimated?

5 MR. MORRIS: Objection to the

6 form of the question.

7 A. Sorry. Can you give me the

8 question again?

9 Q. Yes. Do you know the factual

10 basis from which those constituent

11 components were estimated? I followed up

12 with, was it just experience of

13 professionals, or something else?

14 A. To the first question, it was

15 our experience looking at the assets and

16 looking at how a trustee would approach

17 them and what the costs would be. What is

18 the second question?

19 Q. I will withdraw the second

20 question.

21 I am going to move now to the

22 P&L. It is the first page of the P&L

23 where it talks about revenue. I am going

24 to look at shared services fees. It says

25 "total 2020, 15 million and change." Do

<p style="text-align: right;">Page 194</p> <p>1 J. SEERY</p> <p>2 you see that?</p> <p>3 A. Yes.</p> <p>4 Q. Some of that hasn't been paid.</p> <p>5 Correct?</p> <p>6 A. I assume that this part is a</p> <p>7 P&L, I believe that have not been paid, as</p> <p>8 opposed to a cash draw.</p> <p>9 Q. Well, it looks --</p> <p>10 A. Certainly it is not up to date</p> <p>11 and your clients are in arrears.</p> <p>12 Q. I understand that. That is my</p> <p>13 question. They are in arrears for</p> <p>14 something like 5 or more million dollars.</p> <p>15 Is that correct?</p> <p>16 A. The total amount, I think -- I</p> <p>17 am not sure which are your clients and</p> <p>18 which are others -- is between 5 and</p> <p>19 \$7 million of unpaid post-petition.</p> <p>20 Q. And then it continues to have</p> <p>21 shared service fees of 1.4 and change</p> <p>22 million in 2021 and it looks like that's</p> <p>23 it. Correct?</p> <p>24 A. No.</p> <p>25 Q. What are -- forget about what is</p>	<p style="text-align: right;">Page 195</p> <p>1 J. SEERY</p> <p>2 in default right now. But going forward,</p> <p>3 what are the estimated -- what is the</p> <p>4 estimated revenue from shared service fees</p> <p>5 going forward post-confirmation?</p> <p>6 A. In 2021 -- post-confirmation?</p> <p>7 Q. Yes, sir.</p> <p>8 A. It will be probably about</p> <p>9 90,000, \$100,000 post-confirmation,</p> <p>10 assuming that everything is paid through</p> <p>11 the first three months.</p> <p>12 Q. And you were asked about this</p> <p>13 before, the \$6 million-plus in management</p> <p>14 fees under the plan. You are not prepared</p> <p>15 to give an estimate of the actual expenses</p> <p>16 that would have to be incurred in</p> <p>17 collecting those management fees, are you?</p> <p>18 A. I think I gave one.</p> <p>19 Q. What was it, sir?</p> <p>20 A. It's about 3 to \$4 million.</p> <p>21 Q. Thank you. Then I apologize. I</p> <p>22 had missed it.</p> <p>23 Is there a cure claim, to your</p> <p>24 understanding, associated with assuming</p> <p>25 those management contracts?</p>
<p style="text-align: right;">Page 196</p> <p>1 J. SEERY</p> <p>2 A. I believe there is.</p> <p>3 Q. And is it -- do you know what</p> <p>4 the estimated or potential amount of that</p> <p>5 is?</p> <p>6 A. About half a million dollars.</p> <p>7 Q. Have you included that in the</p> <p>8 expenses you just mentioned of realizing</p> <p>9 those \$6.215 million?</p> <p>10 A. I believe it is actually</p> <p>11 included in the administrative costs.</p> <p>12 Q. The second PDF that counsel sent</p> <p>13 last night, I just have a question about</p> <p>14 this. It shows independent director fees</p> <p>15 going into 2021 and 2022. I had</p> <p>16 understood that under the plan the</p> <p>17 independent directors would no longer be</p> <p>18 there. Am I wrong on that assumption?</p> <p>19 A. You are conflating two different</p> <p>20 types of independent directors.</p> <p>21 Q. Then I apologize. The current</p> <p>22 independent board, that is going to be</p> <p>23 disbanded or whatever the correct word is</p> <p>24 at confirmation. Correct?</p> <p>25 A. That's correct.</p>	<p style="text-align: right;">Page 197</p> <p>1 J. SEERY</p> <p>2 Q. So what independent directors</p> <p>3 are there going to be post-confirmation?</p> <p>4 A. There will be --</p> <p>5 MR. MORRIS: Objection to form.</p> <p>6 A. There will be independent</p> <p>7 persons on the Claimant Oversight</p> <p>8 Committee.</p> <p>9 Q. So the \$210,000 or so monthly in</p> <p>10 that document, that refers to that</p> <p>11 Oversight Committee?</p> <p>12 A. Can you show me the document?</p> <p>13 Q. Yes. It is the second PDF that</p> <p>14 Mr. Morris showed today and yesterday, the</p> <p>15 smaller one. Plan disclosure statement</p> <p>16 forecast profit/loss.</p> <p>17 A. Is this in the projections, or</p> <p>18 something else?</p> <p>19 Q. Sir, I was actually going to ask</p> <p>20 you how these tie in together. Mr. Morris</p> <p>21 yesterday sent two PDF's. One are the</p> <p>22 projections that we have been talking</p> <p>23 about all day. Then he sent a separate</p> <p>24 PDF that is only three pages that is</p> <p>25 called "Profit and Loss." I was going to</p>

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1 J. SEERY
2 see how these two tie in if at all.
3 Do you not have the second PDF
4 on your computer?
5 A. I don't have it in front of me.
6 If you are asking me questions about it, I
7 would like to have it in front of me.
8 This is a three-page profit and loss?
9 Q. Yes.
10 A. I think I have it.
11 MR. MORRIS: I am sending it
12 now.
13 THE WITNESS: You sent it to
14 me --
15 MR. TAYLOR: Bryan is attempting
16 to pull that up for everybody.
17 (Reporter interruption.)
18 MR. TAYLOR: This is something
19 separate sent with Exhibit 1 but not
20 attached thereto.
21 Do you want the total shown for
22 the two-year total or the first page
23 of it? Bryan, you can maneuver the
24 document.
25 MR. RUKAVINA: Bryan, the next

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1 J. SEERY
2 other monthly amounts?
3 A. That may include -- I don't know
4 if that includes my bonus from the case
5 that we would have built into the
6 projections, not for the post that we
7 haven't negotiated, but for the case.
8 Q. Can you think of anything else
9 that that might be other than what you
10 just mentioned?
11 A. No. I can't think of anything
12 specific, no.
13 Q. The row beneath that, "Other
14 bankruptcy fees," do you know what those
15 fees are that is being referenced there?
16 A. I do on the build-up of this,
17 but I don't know the specific items in
18 there. Those would have been the deferred
19 bankruptcy fees for the end of June we
20 expect to be cleaned up by the end of six
21 months, halfway into the year.
22 Q. What do you mean by deferred
23 fees, sir? Just unpaid professional fees?
24 A. Yes.
25 Q. What about the fees after that?

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1 J. SEERY
2 page, please.
3 Q. Are you able to see that,
4 Mr. Seery?
5 A. I can, yes.
6 Q. You see it is 220, 210, 210 and
7 so on for independent director fees. Do
8 you see that, Mr. Seery?
9 A. I do, yes.
10 Q. What are those independent
11 directors related in that line item?
12 A. I am sorry. I don't understand
13 your question.
14 Q. Who are the independent
15 directors being paid these monthly
16 projected amounts?
17 A. They are going to be independent
18 directors on the Claimant Oversight Board,
19 and they will also oversee the litigation
20 trustee.
21 Q. Do you see the entry for
22 June 2021 of \$1,710,000?
23 A. Yes.
24 Q. Do you have an understanding of
25 why that number is so much higher than the

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1 J. SEERY
2 You will see they continue into 2021,
3 other bankruptcy fees. Do you know what
4 that is referring to?
5 A. There will be trustee fees in
6 there. There shouldn't be much left for
7 any committee or anything like that. We
8 should be exited and not have additional
9 cost.
10 Q. Do you understand whether all
11 these costs and expenses are part of the
12 \$59 million estimated expenses through
13 final distribution that we looked at
14 before?
15 A. Yes.
16 MR. RUKAVINA: You can take that
17 down, Bryan.
18 COURT REPORTER: Is that a
19 document you want marked as an
20 exhibit?
21 MR. RUKAVINA: No, thank you.
22 Q. One of the topics that I asked
23 you to be prepared for today was the
24 ownership, if any, of voting preference
25 shares of my fund clients in these CLOs.

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<p>1 J. SEERY</p> <p>2 Are you prepared to discuss that today,</p> <p>3 Mr. Seery?</p> <p>4 A. I know what they are; yes.</p> <p>5 Q. It is not a setup. I just want</p> <p>6 to get through it quickly. Do you have</p> <p>7 some kind of sheet handy or something in</p> <p>8 front of you where you can give me those?</p> <p>9 If not, I can ask differently.</p> <p>10 A. I don't have a sheet in front of</p> <p>11 me, no.</p> <p>12 Q. Are you familiar with who the</p> <p>13 funds, the names of the funds are that I</p> <p>14 represent?</p> <p>15 A. Yes.</p> <p>16 Q. Will you agree with me that each</p> <p>17 of those funds owns some number of voting</p> <p>18 preference shares in some of the CLOs at</p> <p>19 issue under the plan?</p> <p>20 A. I would agree with you that they</p> <p>21 claim to own them. I don't know that for</p> <p>22 a fact.</p> <p>23 Q. Do you have any basis to</p> <p>24 disagree that they own them?</p> <p>25 A. No. I have no basis to agree,</p>	<p>1 J. SEERY</p> <p>2 other than their claims.</p> <p>3 Q. Does the Debtor maintain books</p> <p>4 and records that show the ownership</p> <p>5 interest in the CLOs of various funds?</p> <p>6 A. Does the Debtor maintain? I</p> <p>7 don't quite understand. Does the Debtor</p> <p>8 maintain the interests of who owns the</p> <p>9 shares in the funds?</p> <p>10 Q. No. The Debtor, pursuant to the</p> <p>11 CLO portfolio management agreements,</p> <p>12 manages the CLOs. Correct?</p> <p>13 A. Correct.</p> <p>14 Q. As part of doing that, does the</p> <p>15 Debtor keep books and records of which</p> <p>16 actual entities own the voting preference</p> <p>17 shares in those CLOs?</p> <p>18 A. Not always, no.</p> <p>19 Q. Do you know where such</p> <p>20 information would be stored? And if you</p> <p>21 don't, you don't.</p> <p>22 A. The trustee.</p> <p>23 Q. So you are prepared only to</p> <p>24 agree that these funds claim some</p> <p>25 percentage of ownership of voting</p>
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<p>1 J. SEERY</p> <p>2 preference shares in the CLOs?</p> <p>3 A. Correct.</p> <p>4 Q. So I take it you are not</p> <p>5 prepared to agree that with respect to</p> <p>6 three of the CLOs these funds hold the</p> <p>7 majority of voting preference shares?</p> <p>8 A. That's correct.</p> <p>9 Q. Please tell me what steps you</p> <p>10 undertook prior to today's deposition to</p> <p>11 find out the amount of outstanding voting</p> <p>12 preference shares held by all of these</p> <p>13 funds.</p> <p>14 A. I don't think that was the</p> <p>15 question in your 30(b)(6). It was the</p> <p>16 Debtor's knowledge about its own business.</p> <p>17 So, we didn't investigate whether -- we</p> <p>18 didn't go to the trustee to see whether</p> <p>19 any of your clients actually own anything.</p> <p>20 We didn't check to see whether they traded</p> <p>21 any yesterday or the day before or the day</p> <p>22 before that. We have no idea. From the</p> <p>23 Debtor's perspective, I know what we have.</p> <p>24 Q. You just mean your own ownership</p> <p>25 interest, the Debtor's?</p>	<p>1 J. SEERY</p> <p>2 A. Correct.</p> <p>3 Q. Sir, I asked, with respect to</p> <p>4 each CLO, the present amount of</p> <p>5 outstanding voting preference shares held</p> <p>6 by -- and I listed my funds. What steps,</p> <p>7 if any, did you take to review the</p> <p>8 Debtor's books and records to see if you</p> <p>9 could answer that question?</p> <p>10 A. We don't have that as a regular</p> <p>11 book that we keep and I did not do any</p> <p>12 additional steps to check.</p> <p>13 Q. Did you ask any Debtor employees</p> <p>14 whether they would have the answer to that</p> <p>15 question?</p> <p>16 A. No.</p> <p>17 Q. Without going into any legal</p> <p>18 arguments or contract provisions, would</p> <p>19 you agree with me that those management</p> <p>20 agreements give the majority of voting</p> <p>21 equity shareholders some rights to remove</p> <p>22 the Debtor or terminate the agreements?</p> <p>23 MR. MORRIS: Objection to the</p> <p>24 form of the question.</p> <p>25 A. I would agree that those rights</p>

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<p>1 J. SEERY</p> <p>2 are cabined by, in almost all the</p> <p>3 instances, maybe not every one, cause and</p> <p>4 a specific delineation of what cause would</p> <p>5 be. In some it is not the majority, it is</p> <p>6 the super majority.</p> <p>7 Q. I agree with you, but I just</p> <p>8 wanted you to agree that there are some</p> <p>9 rights. I think you agree that there are</p> <p>10 some rights. We don't have to go down</p> <p>11 exactly what those rights are.</p> <p>12 What I would like to know is, is</p> <p>13 it the Debtor's intent that those rights</p> <p>14 of removal or termination for cause be</p> <p>15 affected by the confirmation of this plan?</p> <p>16 A. I believe there will be an</p> <p>17 injunction that would go in place. Yes.</p> <p>18 Q. So under the plan, to your</p> <p>19 understanding, there is an injunction that</p> <p>20 would affect whoever owns these rights</p> <p>21 post-confirmation from exercising those</p> <p>22 rights?</p> <p>23 A. I don't believe that is the way</p> <p>24 the injunction will work, no.</p> <p>25 Q. What is your understanding of</p>	<p>1 J. SEERY</p> <p>2 how the injunction would work?</p> <p>3 A. I would expect it to be limited</p> <p>4 to your clients so long as they are in</p> <p>5 control and working in concert with</p> <p>6 Mr. Dondero. Certainly that is what I</p> <p>7 would ask for.</p> <p>8 Q. So --</p> <p>9 A. I am not worried about Fidelity</p> <p>10 owning them.</p> <p>11 Q. So if my clients owned voting</p> <p>12 preference shares and if they were under</p> <p>13 the control of or working in concert with</p> <p>14 Mr. Dondero, you would expect the plan to</p> <p>15 affect their exercise of those rights?</p> <p>16 A. I hope so.</p> <p>17 Q. To summarize, they would be</p> <p>18 enjoined from exercising those rights</p> <p>19 post-confirmation. Correct?</p> <p>20 A. There would be a limitation on</p> <p>21 their exercise of those rights is what I</p> <p>22 believe we are hoping for. Yes.</p> <p>23 Q. Do you have an understanding of</p> <p>24 what that limitation will be?</p> <p>25 A. Yes.</p>
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<p>1 J. SEERY</p> <p>2 Q. What is your understanding?</p> <p>3 A. We are looking to have them</p> <p>4 enjoined from taking action to compel the</p> <p>5 dissolution or the transfer of the</p> <p>6 management of those agreements until we</p> <p>7 are able to monetize the assets in the</p> <p>8 vehicles.</p> <p>9 Q. And I asked you before as to how</p> <p>10 long you estimate it will take to monetize</p> <p>11 those assets, and I believe you told me</p> <p>12 maybe two to three years. Would that</p> <p>13 still be an accurate statement, or do you</p> <p>14 have a different time frame?</p> <p>15 A. That is still accurate. The</p> <p>16 assumption is two years.</p> <p>17 Q. I asked you before and you</p> <p>18 didn't have anything in writing by then so</p> <p>19 let me ask now. As of today, do you have</p> <p>20 anything in writing from the CLOs</p> <p>21 consenting to the assumption of those</p> <p>22 management contracts?</p> <p>23 A. I don't believe that I do. It</p> <p>24 could be on my email unopened. I don't</p> <p>25 recall.</p>	<p>1 J. SEERY</p> <p>2 Q. Do you have an understanding of</p> <p>3 whether those CLOs have consented in</p> <p>4 writing to the assumption of the</p> <p>5 management agreements?</p> <p>6 A. I believe they have. The actual</p> <p>7 final docs haven't been completed, but I</p> <p>8 believe they have agreed in writing, yes.</p> <p>9 Q. Do you expect the final docs to</p> <p>10 be completed before Tuesday's confirmation</p> <p>11 hearing?</p> <p>12 A. I don't know whether they will</p> <p>13 be done by Tuesday.</p> <p>14 Q. I think you gave your</p> <p>15 qualifications on Tuesday to manage those</p> <p>16 contracts, so I won't go through that.</p> <p>17 But is the current plan to retain any</p> <p>18 outside servicer or subservicer to assist</p> <p>19 you with managing the portfolio management</p> <p>20 agreements post-confirmation?</p> <p>21 A. I am sorry. I didn't understand</p> <p>22 the question.</p> <p>23 Q. Let me ask it differently.</p> <p>24 As the Debtor, post</p> <p>25 confirmation, manages those portfolio</p>

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1 J. SEERY
2 management agreements, you will be in
3 charge. Correct?
4 A. Yes.
5 Q. Will there be anyone assisting
6 you with managing those agreements?
7 A. Yes.
8 Q. Who will those people be? You
9 don't have to name names. Just who will
10 be helping you?
11 A. I will have a team of probably
12 ten employees that will work with me to
13 help manage those assets. And I will have
14 outside professionals as well as
15 accountants, accountants and lawyers.
16 Q. Those outside professionals you
17 mentioned, I get it, accountants and
18 lawyers. Anyone else?
19 A. No.
20 Q. So you and internal --
21 post-confirmation Debtor employees will be
22 managing those agreements with the
23 assistance of outside counsel and legal --
24 accountants?
25 A. Yes, and third-party

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1 J. SEERY
2 A. Our initial determination is
3 that we prefer to keep them in-house.
4 Q. Have you analyzed the cost of
5 what sourcing that out might be to the
6 post-confirmation Debtor?
7 A. We did, but that was a while
8 back as we started to develop the plan and
9 we determined we preferred to keep it
10 in-house.
11 Q. Why would you prefer to keep it
12 in-house?
13 A. We think it is a better way to
14 control the assets, better way to be able
15 to access the market more efficiently.
16 There are costs that would be able to be
17 kept in line and that we would be able to
18 maximize value in that way better than
19 farming it out to a third party.
20 Q. Under the plan, the holders of
21 limited partnership interests in the
22 Debtor are being given, I think it is
23 called unvested contingent interests in
24 the Claimant trust. Is that generally
25 correct?

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1 J. SEERY
2 professional advisors. Yes.
3 Q. Who will those third-party
4 professional advisors be?
5 A. I haven't identified all of them
6 yet.
7 Q. Is any of the duties or
8 obligations under those management
9 agreements, are they going to be delegated
10 to these third-party professionals?
11 A. I don't expect that to be the
12 case at this time, no.
13 Q. So they might give you advice
14 but ultimately it will be you and your
15 employees that will continue to manage
16 those agreements?
17 A. That is the current plan. Yes.
18 Q. Have you considered -- I am not
19 sure what the correct word is, but have
20 you considered subbing out or
21 sub-agencying out those services to some
22 other party?
23 A. We have considered that, yes.
24 Q. Have you made a determination on
25 that?

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1 J. SEERY
2 A. Generally, yes.
3 Q. Why are they being given those
4 unvested contingent interests?
5 A. Potentially, if litigations
6 against Mr. Dondero are very successful
7 and the amount of the claims are exceeded
8 by the recovery on the assets, then those
9 entities might be able to recover from the
10 recoveries from him.
11 Q. And those would become only
12 vested and contingent if all Class 8 and
13 subordinated creditors and claims were
14 paid full with interest. Correct?
15 A. I believe that is the case, yes.
16 Q. Do you consider those unvested
17 contingent interest in the trusts to be
18 property interests?
19 MR. MORRIS: Objection to form
20 of the question.
21 A. I don't really have a view on
22 that. I think at best they would be
23 inchoate.
24 Q. Suffice it to say from the
25 projection that you don't believe that

<p style="text-align: right;">Page 214</p> <p>1 J. SEERY</p> <p>2 those non-vested contingent interests have</p> <p>3 any value. Do you?</p> <p>4 A. Well, remember, the projections</p> <p>5 don't contain any recoveries from the</p> <p>6 litigation trust. So, I think that it</p> <p>7 would likely be that they don't. But, you</p> <p>8 know, there are some pretty significant</p> <p>9 causes of action.</p> <p>10 Q. And those causes of action, can</p> <p>11 you run me through some of the more</p> <p>12 significant ones?</p> <p>13 MR. MORRIS: Objection to the</p> <p>14 form.</p> <p>15 A. The causes of action include</p> <p>16 fraudulent conveyances, both constructive</p> <p>17 and actual; diversion of assets. They are</p> <p>18 still being investigated. The committee</p> <p>19 has really got the laboring oar on that.</p> <p>20 But there are significant amounts of</p> <p>21 transfers that we have seen that are</p> <p>22 problematic.</p> <p>23 Q. And you believe that those</p> <p>24 causes of action have value?</p> <p>25 A. I believe they do, yes.</p>	<p style="text-align: right;">Page 215</p> <p>1 J. SEERY</p> <p>2 Q. Material, large value?</p> <p>3 A. I don't know.</p> <p>4 Q. You have been a professional</p> <p>5 for, I guess, your whole adult life. Do</p> <p>6 you believe that these non-vested</p> <p>7 contingent interests -- strike all that.</p> <p>8 Have you tried to see whether</p> <p>9 any third party would be willing to make</p> <p>10 an offer to get these unvested contingent</p> <p>11 interests?</p> <p>12 A. No.</p> <p>13 Q. Any reason why not?</p> <p>14 A. No reason to do so. No reason</p> <p>15 why not.</p> <p>16 Q. So those unvested contingent</p> <p>17 interests may have a value, but that value</p> <p>18 would be in the future and subject to a</p> <p>19 pretty serious contingency. Correct?</p> <p>20 A. Yes.</p> <p>21 Q. They may be a property interest,</p> <p>22 but inchoate only. Correct?</p> <p>23 A. That is my belief. I don't</p> <p>24 claim to be an expert on the different</p> <p>25 types of property interests, whether they</p>
<p style="text-align: right;">Page 216</p> <p>1 J. SEERY</p> <p>2 be inchoate, reversionary, ethereal. I</p> <p>3 don't claim to be an expert on the</p> <p>4 different types of property interests.</p> <p>5 Q. Let me ask it this way. If you</p> <p>6 have an understanding, you do; and if you</p> <p>7 don't, you don't.</p> <p>8 If the Debtor owned those</p> <p>9 unvested contingent interests, would you</p> <p>10 consider that to be property of your</p> <p>11 estate?</p> <p>12 MR. MORRIS: Objection to form</p> <p>13 of the question.</p> <p>14 A. I probably would consider it to</p> <p>15 be property of the estate because the</p> <p>16 definition of property of the estate is so</p> <p>17 broad and intended to encompass all manner</p> <p>18 of interests. I think outside of the</p> <p>19 world of bankruptcy in normal parlance</p> <p>20 they would be a pretty thin interest.</p> <p>21 Q. The last time that we were</p> <p>22 provided a ballot summary -- I'm going off</p> <p>23 memory here, but I believe 31 Class 8</p> <p>24 creditors rejected the plan. Does that</p> <p>25 sound about correct?</p>	<p style="text-align: right;">Page 217</p> <p>1 J. SEERY</p> <p>2 A. I don't know.</p> <p>3 Q. My question is, to your</p> <p>4 knowledge have any Class 8 creditors</p> <p>5 switched their vote from reject to accept</p> <p>6 since the ballot summary was filed?</p> <p>7 A. Class 8? I don't know the</p> <p>8 answer to that.</p> <p>9 MR. RUKAVINA: I will pass the</p> <p>10 witness. Thank you.</p> <p>11 MR. MORRIS: Anybody else have</p> <p>12 any questions?</p> <p>13 MR. DRAPER: A few follow-up</p> <p>14 questions.</p> <p>15 Bryan, can you put up the second</p> <p>16 email we got, the last page?</p> <p>17 FURTHER EXAMINATION BY</p> <p>18 MR. DRAPER:</p> <p>19 Q. Can you see, Mr. Seery, there is</p> <p>20 a list of operating expenses on that page?</p> <p>21 A. Can you just let me know which</p> <p>22 doc this is? It would be easier if I</p> <p>23 could actually see the whole page.</p> <p>24 MR. MORRIS: The last one I sent</p> <p>25 you a few minutes ago.</p>

<p style="text-align: right;">Page 218</p> <p>1 J. SEERY</p> <p>2 THE WITNESS: Okay. I think I</p> <p>3 have it.</p> <p>4 Q. You just identified, with the</p> <p>5 question -- that you would be hiring</p> <p>6 accountants, outside professionals,</p> <p>7 third-party professionals, advisors and</p> <p>8 retain ten people. Where in those line</p> <p>9 items for expenses are those costs?</p> <p>10 MR. MORRIS: Can we go to the</p> <p>11 left, please? Thank you.</p> <p>12 A. Professional services.</p> <p>13 Q. And compensation and benefits,</p> <p>14 those would be the ten individuals?</p> <p>15 A. Yes.</p> <p>16 Q. So the combination of the two</p> <p>17 would be the total cost of the retention</p> <p>18 of the management services agreements that</p> <p>19 Davor asked you about?</p> <p>20 A. No.</p> <p>21 MR. MORRIS: Objection to form</p> <p>22 of the question.</p> <p>23 Q. No?</p> <p>24 A. No.</p> <p>25 Q. Let me try to get at it one last</p>	<p style="text-align: right;">Page 219</p> <p>1 J. SEERY</p> <p>2 way. You testified you are going to make</p> <p>3 3 or 4 -- costs of 3 to \$4 million from</p> <p>4 the generation of revenue with respect to</p> <p>5 the change of what you are doing. Where</p> <p>6 in these line items are the costs</p> <p>7 associated with the 3 or \$4 million?</p> <p>8 A. Three to \$4 million are</p> <p>9 contained in multiple places. So, that</p> <p>10 contains employee comp as well as</p> <p>11 additional costs specifically related to</p> <p>12 contracts that need to be maintained in</p> <p>13 order to run the CLO business.</p> <p>14 Q. Is that in any of these line</p> <p>15 items?</p> <p>16 A. Yes.</p> <p>17 Q. Where?</p> <p>18 A. It is in compensation, it is in</p> <p>19 professional services and it is in</p> <p>20 operating expenses.</p> <p>21 Q. Do you know what elements make</p> <p>22 up that within those three line items?</p> <p>23 A. I don't understand the question.</p> <p>24 Q. Within the detail that you have</p> <p>25 that rolls numbers up into this summary,</p>
<p style="text-align: right;">Page 220</p> <p>1 J. SEERY</p> <p>2 do you know, if I had the summary I could</p> <p>3 identify what the components are and what</p> <p>4 the cost of each component is?</p> <p>5 A. I apologize. I still don't</p> <p>6 understand the question. I think I gave</p> <p>7 you the combination of employees and</p> <p>8 additional contracts is in that 2 to</p> <p>9 \$3 million range is my recollection.</p> <p>10 Q. Now, the compensation is not</p> <p>11 solely for the generation of the</p> <p>12 additional revenue. Correct?</p> <p>13 A. Correct.</p> <p>14 Q. How much of the \$7 million is?</p> <p>15 If you don't know, you don't know.</p> <p>16 A. It is somewhere in the million</p> <p>17 to million and a half range.</p> <p>18 Q. Will the details of that line</p> <p>19 item tell me how much is in there?</p> <p>20 A. Not necessarily because</p> <p>21 employees do multiple functions. So, we</p> <p>22 haven't done a cost basis for each part of</p> <p>23 the business that we are maintaining.</p> <p>24 Q. What about professional</p> <p>25 services? Will that detail tell me?</p>	<p style="text-align: right;">Page 221</p> <p>1 J. SEERY</p> <p>2 A. Again, we have estimated overall</p> <p>3 services. We don't look at a specific</p> <p>4 line item and say this accountant is going</p> <p>5 to just work on this one item and this</p> <p>6 consultant will just work on this other</p> <p>7 item. We have not broken it out -- we</p> <p>8 have broken it out as a company, not as a</p> <p>9 function.</p> <p>10 Q. Now, the Debtor has filed suit</p> <p>11 on demand notes. Correct?</p> <p>12 A. Yes.</p> <p>13 Q. Do those notes -- (inaudible)</p> <p>14 MR. TAYLOR: Mr. Draper, if I</p> <p>15 can suggest, you are so much</p> <p>16 clearer -- I know you can't hear</p> <p>17 yourself -- when you pick up the</p> <p>18 phone.</p> <p>19 MR. DRAPER: Let me re-call in</p> <p>20 then. Well, I will just pass the</p> <p>21 witness. That is fine.</p> <p>22 MR. MORRIS: Does anybody have</p> <p>23 any more questions? We are not just</p> <p>24 going to continue to beat the pinata.</p> <p>25 THE WITNESS: I resent that.</p>

<div style="text-align: right;">Page 222</div> <p>1 J. SEERY</p> <p>2 MR. MORRIS: I apologize. We</p> <p>3 are not just going to continue to take</p> <p>4 turns here.</p> <p>5 MR. TAYLOR: We do not have</p> <p>6 further questions.</p> <p>7 MR. MORRIS: Thank you very</p> <p>8 much.</p> <p>9 MR. RUKAVINA: I am done.</p> <p>10 [TIME NOTED: 2:53 p.m. EST]</p> <p>11</p> <p>12</p> <p>13</p> <p>14 _____</p> <p>15 JAMES P. SEERY, JR.</p> <p>16</p> <p>17</p> <p>18 SUBSCRIBED AND SWORN TO</p> <p>19 BEFORE ME THIS _____ DAY</p> <p>20 OF _____, 2021.</p> <p>21</p> <p>22 _____</p> <p>23 NOTARY PUBLIC</p> <p>24</p> <p>25</p>	<div style="text-align: right;">Page 223</div> <p>1</p> <p>2 CERTIFICATION</p> <p>3</p> <p>4</p> <p>5 I, DEBRA STEVENS, a Notary Public for</p> <p>6 and within the State of New York, do</p> <p>7 hereby certify:</p> <p>8 That the witness whose testimony as</p> <p>9 herein set forth, was duly sworn by me;</p> <p>10 and that the within transcript is a true</p> <p>11 record of the remote testimony given by</p> <p>12 said witness.</p> <p>13 I further certify that I am not</p> <p>14 related to any of the parties to this</p> <p>15 action by blood or marriage, and that I am</p> <p>16 in no way interested in the outcome of</p> <p>17 this matter.</p> <p>18 IN WITNESS WHEREOF, I have hereunto</p> <p>19 set my hand this 29th day of January,</p> <p>20 2021.</p> <p>21</p> <p>22 _____</p> <p>23 DEBRA STEVENS, RPR-CRR</p> <p>24</p> <p>25 * * *</p>																																																
<div style="text-align: right;">Page 224</div> <p>1</p> <p>2 WITNESS ERRATA SHEET</p> <p>3</p> <p>4 CASE NAME: Highland Capital</p> <p>5 DATE OF DEPOSITION: January 29, 2021</p> <p>6 WITNESS NAME: JAMES P. SEERY, JR.</p> <p>7</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 30%;">PAGE/LINE(S) /</th> <th style="width: 30%;">CHANGE</th> <th style="width: 40%;">REASON</th> </tr> </thead> <tbody> <tr><td>6</td><td>_____</td><td>_____</td></tr> <tr><td>7</td><td>_____</td><td>_____</td></tr> <tr><td>8</td><td>_____</td><td>_____</td></tr> <tr><td>9</td><td>_____</td><td>_____</td></tr> <tr><td>10</td><td>_____</td><td>_____</td></tr> <tr><td>11</td><td>_____</td><td>_____</td></tr> <tr><td>12</td><td>_____</td><td>_____</td></tr> <tr><td>13</td><td>_____</td><td>_____</td></tr> <tr><td>14</td><td>_____</td><td>_____</td></tr> <tr><td>15</td><td>_____</td><td>_____</td></tr> <tr><td>16</td><td>_____</td><td>_____</td></tr> <tr><td>17</td><td>_____</td><td>_____</td></tr> <tr><td>18</td><td>_____</td><td>_____</td></tr> <tr><td>19</td><td>_____</td><td>_____</td></tr> <tr><td>20</td><td>_____</td><td>_____</td></tr> </tbody> </table> <p>21 _____</p> <p>22 JAMES P. SEERY, JR.</p> <p>23 SUBSCRIBED AND SWORN TO</p> <p>24 BEFORE ME THIS _____ DAY</p> <p>25 OF _____, 2021.</p> <p>_____</p> <p>NOTARY PUBLIC</p> <p>MY COMMISSION EXPIRES _____</p>	PAGE/LINE(S) /	CHANGE	REASON	6	_____	_____	7	_____	_____	8	_____	_____	9	_____	_____	10	_____	_____	11	_____	_____	12	_____	_____	13	_____	_____	14	_____	_____	15	_____	_____	16	_____	_____	17	_____	_____	18	_____	_____	19	_____	_____	20	_____	_____	
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HMIT Exhibit No. 19

007315

1 IN THE UNITED STATES BANKRUPTCY COURT
2 FOR THE NORTHERN DISTRICT OF TEXAS
3 DALLAS DIVISION

4 -----)

5 In Re: Chapter 11
6 HIGHLAND CAPITAL Case No.
7 MANAGEMENT, LP, 19-34054-SGJ 11

8
9 Debtor
10 -----
11
12

13 REMOTE DEPOSITION OF JAMES P. SEERY, JR.

14 January 29, 2021

15 10:11 a.m. EST
16
17
18
19
20
21
22

23 Reported by:
24 Debra Stevens, RPR-CRR
25 JOB NO. 189212

Page 14

1 J. SEERY
2 the screen, please?
3 A. Page what?
4 Q. I think it is page 174.
5 A. Of the PDF or of the document?
6 Q. Of the disclosure statement that
7 was filed. It is up on the screen right
8 now.
9 COURT REPORTER: Do you intend
10 this as another exhibit for today's
11 deposition?
12 MR. DRAPER: We'll mark this
13 Exhibit 2.
14 (So marked for identification as
15 Seery Exhibit 2.)
16 Q. If you look to the recovery to
17 Class 8 creditors in the November 2020
18 disclosure statement was a recovery of
19 87.44 percent?
20 A. That actually says the percent
21 distribution to general unsecured
22 creditors was 87.44 percent. Yes.
23 Q. And in the new document that was
24 filed, given to us yesterday, the recovery
25 is 62.5 percent?

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1 J. SEERY
2 anybody else?
3 A. I said Mr. Doherty.
4 Q. In looking at the two elements,
5 and what I have asked you to look at is
6 the claims pool. If you look at the
7 November disclosure statement, if you look
8 down Class 8, unsecured claims?
9 A. Yes.
10 Q. You have 176,000 roughly?
11 A. Million.
12 Q. 176 million. I am sorry. And
13 the number in the new document is 313
14 million?
15 A. Correct.
16 Q. What accounts for the
17 difference?
18 A. An increase in claims.
19 Q. When did those increases occur?
20 Were they yesterday? A month ago? Two
21 months ago?
22 A. Over the last couple months.
23 Q. So in fact over the last couple
24 months you knew in fact that the recovery
25 in the November disclosure statement was

Page 15

1 J. SEERY
2 A. It says the percent distribution
3 to general unsecured creditors is
4 62.14 percent.
5 Q. Have you communicated the
6 reduced recovery to anybody prior to the
7 date -- to yesterday?
8 MR. MORRIS: Objection to the
9 form of the question.
10 A. I believe generally, yes. I
11 don't know if we have a specific number,
12 but generally yes.
13 Q. And would that be members of the
14 Creditors' Committee who you gave that
15 information to?
16 A. Yes.
17 Q. Did you give it to anybody other
18 than members of the Creditors' Committee?
19 A. Yes.
20 Q. Who?
21 A. HarbourVest.
22 Q. And when was that?
23 A. Within the last two months.
24 Q. You did not feel the need to
25 communicate the change in recovery to

Page 17

1 J. SEERY
2 not accurate?
3 A. Yes. We secretly disclosed it
4 to the Bankruptcy Court in open court
5 hearings.
6 Q. But you never did bother to
7 calculate the reduced recovery; you just
8 increased --
9 (Reporter interruption.)
10 Q. You just advised as to the
11 increased claims pool. Correct?
12 MR. MORRIS: Objection to the
13 form of the question.
14 A. I don't understand your
15 question.
16 Q. What I am trying to get at is,
17 as you increase the claims pool, the
18 recovery reduces. Correct?
19 A. No. That is not how a fraction
20 works.
21 Q. Well, if the denominator
22 increases, doesn't the recovery ultimately
23 decrease if --
24 A. No.
25 Q. -- if the numerator stays the

Page 26

1 J. SEERY
2 were amended without consideration a few
3 years ago. So, for our purposes we didn't
4 make the assumption, which I am sure will
5 happen, a fraudulent conveyance claim on
6 those notes, that a fraudulent conveyance
7 action would be brought. We just assumed
8 that we'd have to discount the notes
9 heavily to sell them because nobody would
10 respect the ability of the counterparties
11 to fairly pay.
12 Q. And the same discount was
13 applied in the liquidation analysis to
14 those notes?
15 A. Yes.
16 Q. Now --
17 A. The difference -- there would be
18 a difference, though, because they would
19 pay for a while because they wouldn't want
20 to accelerate them. So there would be
21 some collections on the notes for P and I.
22 Q. But in fact as of January you
23 have accelerated those notes?
24 A. Just one of them, I believe.
25 Q. Which note was that?

Page 28

1 J. SEERY
2 you whether they are included in the asset
3 portion of your \$257 million number, all
4 right? Mr. Morris didn't want me to go
5 into specific asset value, and I don't
6 intend to do that.
7 The first question I have for
8 you is, the equity in Trustway Highland
9 Holdings, is that included in the
10 \$257 million number?
11 A. There is no such entity.
12 Q. Then I will do it in a different
13 way. In connection with the sale of the
14 hard assets, what assets are included in
15 there specifically?
16 A. Off the top of my head -- it is
17 all of the assets, but it includes
18 Trustway Holdings and all the value that
19 flows up from Trustway Holdings. It
20 includes Targa and all the value that
21 flows up from Targa. It includes CCS
22 Medical and all the value that would flow
23 to the Debtor from CCS Medical. It
24 includes Cornerstone and all the value
25 that would flow from Cornerstone. It

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1 J. SEERY
2 A. NexPoint, I said. They
3 defaulted on the note and we accelerated
4 it.
5 Q. So there is no need to file a
6 fraudulent conveyance suit with respect to
7 that note. Correct, Mr. Seery?
8 MR. MORRIS: Objection to the
9 form of the question.
10 A. Disagree. Since it was likely
11 intentional fraud, there may be other
12 recoveries on it. But to collect on the
13 note, no.
14 Q. My question was with respect to
15 that note. Since you have accelerated it,
16 you don't need to deal with the issue of
17 when it's due?
18 MR. MORRIS: Objection to the
19 form of the question.
20 A. That wasn't your question. But
21 to that question, yes, I don't need to
22 deal with when it's due.
23 Q. Let me go over certain assets.
24 I am not going to ask you for the
25 valuation of them but I am going to ask

Page 29

1 J. SEERY
2 includes any other securities and all the
3 value that would flow from Cornerstone.
4 It includes HCLOF and all the value that
5 would flow up from HCLOF. It includes
6 Korea and all the value that would flow up
7 from Korea.
8 There may be others off the top
9 of my head. I don't recall them. I don't
10 have a list in front of me.
11 Q. Now, with respect to those
12 assets, have you started the sale process
13 of those assets?
14 A. No. Well, each asset is
15 different. So, the answer is, with
16 respect to any securities, we do seek to
17 sell those regularly and we do seek to
18 monetize those assets where we can
19 depending on whether there is a
20 restriction or not and whether there is
21 liquidity in the market.
22 With respect to the PE assets or
23 the companies I described -- Targa, CCS,
24 Cornerstone, JHT -- we have not --
25 Trustway. We have not sought to sell

Page 30

1 J. SEERY
2 those assets yet.
3 Q. In connection -- you have sold
4 one business, which Mr. Dondero and
5 Mr. Lynne raised an issue about and that
6 is the SSP sale?
7 A. Yes.
8 Q. How was that sale effectuated?
9 A. What do you mean? Cash versus
10 securities or do you want description of
11 the process?
12 Q. The process.
13 A. How far back would you like me
14 to start?
15 Q. Let's start from the time -- how
16 did you obtain an offer for that asset?
17 A. Then I can start from the
18 beginning if you like.
19 Q. That's fine.
20 A. When the board was installed we
21 took a review of all of the assets of the
22 company. We met with the various teams at
23 Highland who were managing those assets,
24 including the PE team that was managing
25 SSP. We examined the performance of SSP

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1 J. SEERY
2 to the management team, who concurred with
3 that assessment.
4 We went about trying to raise
5 capital internally to try to do some of
6 the work for CapEx at the company to put
7 it in the best position to seek to
8 monetize the value over some period of
9 time -- we didn't have a fixed period. We
10 looked at opportunities where investors
11 came and proposed bids for the company.
12 We considered them, talked to external
13 bankers, talked to the internal team and
14 determined that if we could get
15 \$50 million we believed that would have
16 been fair value for the company.
17 We received numerous bids,
18 competed off a couple bids against each
19 other and ended up going with a company
20 called Race Rock. Race Rock ultimately
21 closed the transaction with us.
22 Management concurred, management went
23 along with that transaction and we closed
24 it.
25 Q. Will the same process in essence

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1 J. SEERY
2 and its conditions. We looked at the
3 opportunity to invest in the company,
4 which we determined we didn't have the
5 ability to do, or to monetize it another
6 way or just to hold it for a better
7 market.
8 We determined with the team,
9 after advice from the PE team, that
10 investments had to be made in the company
11 in order to make it competitive and that
12 those capital investments would need to be
13 made relatively quickly. We determined
14 with the team that the asset had a value
15 that we would like to try to receive, and
16 if we could receive that we should do so
17 because we weren't going to be able to
18 make the investments.
19 Primarily the biggest issues
20 were their ability to compete with much,
21 much larger competitors and the need to
22 deal with those competitors who were also
23 customers. Without the investments we
24 thought that the company could be at
25 substantial risk. Our PE team also talked

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1 J. SEERY
2 be employed for the sale of the other
3 businesses?
4 A. Not necessarily, no.
5 Q. Who ran the SSP sale process?
6 A. No one person. We had a team of
7 people at Highland that were the PE team
8 sitting on top of it. They worked with me
9 to drive the process.
10 Q. Would the same PE team be
11 employed or used to sell the other
12 businesses?
13 A. Not necessarily.
14 (Proceedings interrupted;
15 technical interruption.)
16 Q. Mr. Seery, the only --
17 MR. MORRIS: I am having a
18 difficult time hearing you, Douglas.
19 Q. Mr. Seery, the only external
20 people to Highland in that process, if I
21 understand, are you, the internal board
22 and DSI. Is that correct?
23 A. No.
24 Q. Am I correct in that?
25 A. No.

<p style="text-align: right;">Page 34</p> <p>1 J. SEERY</p> <p>2 Q. Who else is external?</p> <p>3 A. External counsel, both</p> <p>4 bankruptcy and corporate.</p> <p>5 Q. Now, the corporate counsel, were</p> <p>6 they previously counsel for the business,</p> <p>7 or they are new counsel that you have</p> <p>8 brought in?</p> <p>9 MR. MORRIS: Objection.</p> <p>10 A. They are new counsel to the</p> <p>11 business.</p> <p>12 Q. Let me ask a question. In the</p> <p>13 liquidation analysis, if a trustee was</p> <p>14 appointed, couldn't the trustee use</p> <p>15 Pachulski or corporate counsel to</p> <p>16 facilitate a sale?</p> <p>17 A. Couldn't they? I suppose they</p> <p>18 could. My experience is that they don't.</p> <p>19 I am not sure, if they got permission from</p> <p>20 the court, that they couldn't. But</p> <p>21 typically trustee counsel, in my</p> <p>22 experience, gets its own counsel separate</p> <p>23 from the Debtor's prior counsel. But I</p> <p>24 suppose they --</p> <p>25 Q. But what about transactional</p>	<p style="text-align: right;">Page 35</p> <p>1 J. SEERY</p> <p>2 counsel that had a knowledge of the</p> <p>3 business? Couldn't they use them to help</p> <p>4 facilitate the sale?</p> <p>5 A. Again, I suppose they could.</p> <p>6 They might need permission from the court.</p> <p>7 I have not seen that done that way before,</p> <p>8 but I suppose they could.</p> <p>9 Q. And in fact, in a liquidation,</p> <p>10 which you are doing for these businesses,</p> <p>11 a trustee could hire a third party who is</p> <p>12 as capable as you and others to facilitate</p> <p>13 the sale or arrange for the sale.</p> <p>14 Correct?</p> <p>15 A. Well, I take issue with your</p> <p>16 proposition that we are liquidating these</p> <p>17 assets and it is a liquidation. We are</p> <p>18 not -- plan analysis is not a liquidation</p> <p>19 analysis. The liquidation analysis is a</p> <p>20 liquidation analysis.</p> <p>21 Q. Let's not parse words. Your</p> <p>22 intention is to sell these assets on or</p> <p>23 before December 2022. Correct?</p> <p>24 A. Let's parse words. This is a</p> <p>25 deposition and you are specifically trying</p>
<p style="text-align: right;">Page 36</p> <p>1 J. SEERY</p> <p>2 to put certain things into a framework</p> <p>3 that you would like to use later. So, it</p> <p>4 is about parsing words.</p> <p>5 We have a plan that is a</p> <p>6 monetization plan. Your supposition is</p> <p>7 incorrect. We are going to manage these</p> <p>8 businesses and look for opportunities to</p> <p>9 monetize them when it is appropriate based</p> <p>10 upon how we look at the market, what the</p> <p>11 conditions are for each of the individual</p> <p>12 assets and the best way to do that within</p> <p>13 what we think is a reasonable time frame.</p> <p>14 That is very different than a liquidation.</p> <p>15 Q. Let me ask you a question. The</p> <p>16 assumption that is made in the plan</p> <p>17 analysis that you have here is that</p> <p>18 everything is sold by December of 2022.</p> <p>19 Correct?</p> <p>20 A. For the purposes of this</p> <p>21 projection and assumptions, yes.</p> <p>22 Q. Which one of the operating</p> <p>23 businesses that are here go into the trust</p> <p>24 versus those retained by the reorganized</p> <p>25 debtor?</p>	<p style="text-align: right;">Page 37</p> <p>1 J. SEERY</p> <p>2 A. I think any of the businesses</p> <p>3 that we can transfer into the trust, we</p> <p>4 will do so for ease of operation. There</p> <p>5 is no requirement that we have to transfer</p> <p>6 any particular ones into the trust.</p> <p>7 Q. So, which ones cannot be</p> <p>8 transferred into the trust?</p> <p>9 A. None of the businesses cannot be</p> <p>10 transferred into the trust. The question</p> <p>11 is with respect to underlying obligations</p> <p>12 at the business, if that transfer would</p> <p>13 trigger a change of control or some other</p> <p>14 change in the business either with respect</p> <p>15 to important contracts or financings, we</p> <p>16 wouldn't make the transfer without</p> <p>17 amending the agreements or putting new</p> <p>18 agreements in place.</p> <p>19 Q. So, is it your testimony that</p> <p>20 potentially these businesses could be</p> <p>21 owned and operated for 10 years?</p> <p>22 A. Potentially, yes.</p> <p>23 Q. Isn't there a limitation on the</p> <p>24 liquidation trust that you have in place</p> <p>25 as to its life?</p>

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1 J. SEERY

2 A. I don't recall the specific

3 limitation on the trust. But if there was

4 a reason to hold on to the asset, if there

5 is a limitation, we can seek an extension.

6 Q. Let me ask a question. With

7 respect to these businesses, the Debtor

8 merely owns an equity interest in them.

9 Correct?

10 A. Which business?

11 Q. The ones you have identified as

12 operating businesses earlier?

13 A. It depends on the business.

14 Q. Well, let me -- again, let's try

15 to be specific. With respect to SSP, it

16 was your position that you did not need to

17 get court approval for the sale. Correct?

18 A. That's correct.

19 Q. Which one of the operating

20 businesses that are here, that you have

21 identified, do you need court authority

22 for a sale?

23 MR. MORRIS: Objection to the

24 form of the question.

25 A. Each of the businesses will be a

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1 J. SEERY

2 or determined the discount that has been

3 placed between the two, plan analysis

4 versus liquidation analysis?

5 MR. MORRIS: Objection to form

6 of the question.

7 A. To which document are you

8 referring?

9 Q. Both the June -- the January and

10 the November analysis has a different

11 estimated proceeds for monetization for

12 the plan analysis versus the liquidation

13 analysis. Do you see that?

14 A. Yes.

15 Q. And there is a note under there.

16 "Assumes Chapter 7 trustee will not be

17 able to achieve the same sales proceeds as

18 Claimant trustee."

19 A. I see that, yes.

20 Q. Do you see that note?

21 A. Yes.

22 Q. Who arrived at that discount?

23 A. I did.

24 Q. What percentage did you use?

25 A. Depended on the asset. Each one

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1 J. SEERY

2 different analysis that we'll undertake

3 with bankruptcy counsel to determine what

4 we would need depending on when it is

5 going to happen and what the restrictions

6 either under the code are or under the

7 plan.

8 Q. Is there anything that would

9 stop you from selling these businesses if

10 the Chapter 11 went on for a year or two

11 years?

12 MR. MORRIS: Objection to form

13 of the question.

14 A. Is there anything that would

15 stop me? We'd have to follow the

16 strictures of the code and the protocols,

17 but there would be no prohibition -- let

18 me finish, please.

19 There would be no prohibition

20 that I am aware of.

21 Q. Now, in connection with your

22 differential between the liquidation of

23 what I will call the operating businesses

24 under the liquidation analysis and the

25 plan analysis, who arrived at the discount

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1 J. SEERY

2 is different.

3 Q. Is the discount a function of

4 capability of a trustee versus your

5 capability, or is the discount a function

6 of timing?

7 MR. MORRIS: Objection to form.

8 A. It could be a combination.

9 Q. So, let's -- let me walk through

10 this. Your plan analysis has an

11 assumption that everything is sold by

12 December 2022. Correct?

13 A. Correct.

14 Q. And the valuations that you have

15 used here for the monetization assume a

16 sale between -- a sale prior to December

17 of 2022. Correct?

18 A. Sorry. I don't quite understand

19 your question.

20 Q. The 257 number, and then let's

21 take out the notes. Let's use the 210

22 number.

23 MR. MORRIS: Can we put the

24 document back on the screen, please?

25 Sorry, Douglas, to interrupt, but it

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1 J. SEERY
2 would be helpful.
3 MR. DRAPER: That is fine, John.
4 (Pause.)
5 MR. MORRIS: Thank you very
6 much.
7 Q. Mr. Seery, do you see the 257?
8 A. In the one from yesterday?
9 Q. Yes.
10 A. Second line, 257,941. Yes.
11 Q. That assumes a monetization of
12 all assets by December of 2022?
13 A. Correct.
14 Q. And so everything has been sold
15 by that time; correct?
16 A. Yes.
17 Q. So, what I am trying to get at
18 is, there is both the capability between
19 you and a trustee, and then the second
20 issue is timing. So, what discount was
21 put on for timing, Mr. Seery, between when
22 a trustee would sell it versus when you
23 would sell it?
24 MR. MORRIS: Objection.
25 Q. What is the percentage you

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1 J. SEERY
2 as capable as you are?
3 MR. MORRIS: Objection to the
4 form of the question.
5 A. I don't know.
6 Q. Is there anybody as capable as
7 you are?
8 MR. MORRIS: Objection to the
9 form of the question.
10 A. Certainly.
11 Q. And they could be hired.
12 Correct?
13 A. Perhaps. I don't know.
14 Q. And if you go back to the
15 November 2020 liquidation analysis versus
16 plan analysis, it is also the same note
17 about that a trustee would bring less, and
18 there is the same sort of discount between
19 the estimated proceeds under the plan and
20 under the liquidation analysis.
21 MR. MORRIS: If that is a
22 question, I object.
23 Q. Is that correct, Mr. Seery,
24 looking at the document?
25 A. There are discounts, yes.

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1 J. SEERY
2 applied?
3 A. Each of the assets is different.
4 Q. Is there a general discount that
5 you used?
6 A. Not a general discount, no. We
7 looked at each individual asset and went
8 through and made an assessment.
9 Q. Did you apply a discount for
10 your capability versus the capability of a
11 trustee?
12 A. No.
13 Q. So a trustee would be as capable
14 as you are in monetizing these assets?
15 MR. MORRIS: Objection to the
16 form of the question.
17 Q. Excuse me? The answer is?
18 A. The answer is maybe.
19 Q. Couldn't a trustee hire somebody
20 as capable as you are?
21 MR. MORRIS: Objection to the
22 form of the question.
23 A. Perhaps.
24 Q. Sir, that is a yes or no
25 question. Could the trustee hire somebody

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1 J. SEERY
2 Q. Again, the discounts are applied
3 for timing and capability?
4 A. Yes.
5 Q. Now, in looking at the November
6 plan analysis number of \$190 million and
7 the January number of \$257 million, what
8 accounts for the increase between the two
9 dates? What assets specifically?
10 A. There are a number of assets.
11 Firstly, the HCLOF assets are added.
12 Q. How much are those?
13 A. Approximately 22 and a half
14 million dollars.
15 Q. Okay.
16 A. Secondly, there is a significant
17 increase in the value of certain of the
18 assets over this time period.
19 Q. Which assets, Mr. Seery?
20 A. There are a number. They
21 include MGM stock, they include Trustway,
22 they include Targa.
23 Q. And what is the percentage
24 increase from November to January,
25 November of 2020 to January of 2021?

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1 J. SEERY

2 A. Do you mean what is the

3 percentage increase from 190 to 257?

4 Q. No. You just identified three

5 assets. MGM stock, we can go look at the

6 exchange and figure out what the price

7 increase is; correct?

8 A. No.

9 Q. Why not? Is the MGM stock

10 publicly traded?

11 A. Yes. It doesn't trade on --

12 Q. Excuse me?

13 A. It doesn't trade on an exchange.

14 Q. Is there a public market for the

15 MGM stock that we could calculate the

16 increase?

17 A. There is a semipublic market;

18 yes.

19 Q. So it is a number that is

20 readily available between the two dates?

21 A. It's available.

22 Q. Now, you identified Targa and

23 Trustway. Correct?

24 A. Yes.

25 Q. Those are not readily available

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1 J. SEERY

2 Q. And if I understand what you

3 just said, it is that the Houlihan Lokey

4 valuation for those two businesses showed

5 a significant increase between November of

6 2020 and January of 2021?

7 MR. MORRIS: Objection to form

8 of the question.

9 A. I didn't say that.

10 Q. I am trying to account for the

11 increase between the two dates, and you

12 identified three assets. You identified

13 MGM stock, which has, I can guess, as you

14 have said, a readily ascertainable value.

15 Then you identified two others that the

16 valuation is based upon something Houlihan

17 Lokey provided you. Correct?

18 A. I gave you three examples. I

19 never said "readily." That is your word,

20 not mine. And I didn't say that Houlihan

21 had a significant change in their

22 valuation.

23 Q. So let's now go back to the

24 question. There is an increase in value

25 from November 24th of 2020 to January 28th

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1 J. SEERY

2 markets; correct?

3 A. No.

4 Q. Those are operating businesses?

5 A. Correct.

6 Q. Who provided the valuation for

7 the November 2020 liquidation analysis?

8 A. We use a combination of the

9 value that we get from Houlihan Lokey for

10 mark purposes and then we adjust it for

11 plan purposes.

12 Q. And the adjustment was up or

13 down?

14 A. When?

15 Q. For both November and January.

16 You got a number from Houlihan Lokey. You

17 adjusted it. Did you adjust it up or did

18 you adjust it down?

19 MR. MORRIS: Objection to form

20 of the question.

21 A. I believe that for November we

22 adjusted it down, and for January we

23 adjusted it down. I don't recall off the

24 top of my head but I believe both of them

25 were adjusted down.

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1 J. SEERY

2 of 2021, the magnitude being roughly 60

3 some odd million dollars. Correct?

4 A. Correct.

5 Q. We can account for \$22 million

6 of it easily, right?

7 MR. MORRIS: Objection to form.

8 A. Correct.

9 Q. That is the HarbourVest

10 settlement, so that leaves roughly

11 \$40 million unaccounted for?

12 MR. MORRIS: Objection to the

13 form of the question if that is a

14 question. It is accounted for.

15 Q. What makes up that difference,

16 Mr. Seery?

17 A. A change in the plan value of

18 the assets.

19 Q. Okay. Which assets? Let's sort

20 of go back to where we were.

21 A. There are numerous assets in the

22 plan formulation. I gave you three

23 examples of the operating businesses. The

24 securities, I believe, have increased in

25 value since the plan, so those would go up

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1 J. SEERY

2 A. We are not out shopping it right

3 now.

4 Q. And why is that?

5 A. We took a break.

6 Q. And why is that?

7 A. Didn't like the market

8 conditions.

9 Q. And what do you believe are

10 unfavorable about the market conditions?

11 A. The market has evolved. There

12 was a major -- it is really way too

13 complicated for this discussion. But we

14 don't like the market conditions. We

15 think the company has got opportunities to

16 continue to prove its business plan. When

17 the market conditions are better we'll

18 determine whether to access or not.

19 Q. Is it cash flow positive?

20 A. Yes.

21 Q. How about JHT? Have they or

22 Highland employed a broker?

23 A. No.

24 Q. Do you intend to hire a broker?

25 A. Not necessarily.

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1 J. SEERY

2 been prepared?

3 A. I don't believe so.

4 Q. Any teasers been prepared?

5 A. I'd consider that a marketing

6 material.

7 Q. Fair enough.

8 I believe you previously

9 testified that the MGM stock is

10 semi-liquid. Where are they actually

11 traded?

12 MR. MORRIS: Objection to form

13 of the question.

14 A. It is an over-the-counter

15 market.

16 MR. TAYLOR: We were talking

17 over each other. For the court

18 reporter's purposes, Mr. Morris made

19 an objection. I believe it was as to

20 form.

21 MR. MORRIS: Correct.

22 Q. The question is still

23 outstanding if you understand. Otherwise

24 I will restate.

25 A. It's traded in the gray market.

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1 J. SEERY

2 Q. Have you prepared any marketing

3 materials for JHT?

4 A. No.

5 Q. How about Targa? Have you

6 employed a broker?

7 A. No.

8 Q. Any --

9 A. Brokers have been talked to but

10 we haven't employed one, no.

11 Q. How many brokers have you

12 interviewed or interfaced with?

13 A. I haven't talked to any.

14 Q. How many has Targa been talking

15 to?

16 A. It talked to at least two

17 potential counterparties for

18 monetizations.

19 Q. So when you say

20 "counterparties," you are talking not

21 brokers; they have actually talked with

22 potential buyers?

23 A. Potential buyers and brokers.

24 Brokers could also participate in a buy.

25 Q. Have any marketing materials

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1 J. SEERY

2 It's OTC.

3 Q. What percentage of the

4 securities that Highland holds is MGM

5 securities approximately?

6 MR. MORRIS: Objection to form

7 of the question.

8 A. You have to break it down

9 significantly. Highland owns its own

10 holdings directly in MGM securities. Then

11 Highland manages different funds that own

12 MGM securities, and those funds are owned

13 by different investors. Or if they are

14 not owned by those investors they have

15 different interests in those funds.

16 Q. Sometimes Highland owns a

17 portion of those funds that own the MGM

18 securities. Is that correct?

19 A. That's correct.

20 Q. Out of the actual equities that

21 Highland owns or owns a percentage of

22 funds that owns them, what percentage of

23 the securities in which Highland has an

24 interest is MGM Studios? Is it

25 50 percent? Is it 20 percent?

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1 J. SEERY
2 MR. MORRIS: Objection to form.
3 A. I don't understand your
4 question. But maybe I can get there more
5 easily. Are you asking if the direct or
6 indirect ownership of MGM constitutes a
7 substantial portion of the securities with
8 which Highland is involved?
9 Q. That was much more artfully
10 asked. Thank you very much. Yes, that
11 was precisely what I was trying to get to.
12 A. The vast majority.
13 Q. I truly don't know the answer to
14 this so I am just asking. When you say
15 "vast majority," are we talking around
16 90 percent?
17 A. It has to be at least that
18 amount.
19 Q. Am I correct in presuming that
20 any kind of sell-down of MGM securities
21 will probably have to be in a step-down
22 basis such that you don't flood the
23 market?
24 A. A what basis?
25 Q. On a step-down basis or gradual

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1 J. SEERY
2 Q. When you say "we are working our
3 way through it," who are you working with
4 on that?
5 A. Myself, my team at DSI,
6 Pachulski, other outside counsel.
7 Q. Any appointed Chapter 7 trustee
8 could potentially hire DSI to perform the
9 same work. Correct?
10 A. I suppose potentially, if the
11 court approved it, yes.
12 Q. The Korea Fund, has Highland or
13 its appropriate subsidiary hired a broker
14 on that?
15 A. No.
16 Q. Prepared any marketing
17 materials?
18 A. No.
19 Q. How about CCS Medical? Have
20 they or Highland hired any brokers?
21 A. Yes.
22 Q. Who have they hired?
23 A. Cantor Fitzgerald.
24 Q. And is that Highland employing
25 them, or is that CCS Medical?

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1 J. SEERY
2 basis such you don't flood the market and
3 significantly impact the price?
4 MR. MORRIS: Objection to the
5 form of the question.
6 A. That is incorrect.
7 Q. You might be looking for a bulk
8 buyer?
9 A. It could be.
10 Q. Do you feel any more qualified
11 to sell those than a hypothetical Chapter
12 7 trustee?
13 MR. MORRIS: Objection to form
14 of the question.
15 A. It would depend on the trustee.
16 Q. The real property loans that
17 Highland owns or owns indirectly, those
18 are all secured presumably by real estate.
19 Correct?
20 MR. MORRIS: Objection to form
21 of the question.
22 A. It's well more complicated than
23 that because Highland set up a bit of a
24 tax scheme around these assets. So, we
25 are working our way through it.

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1 J. SEERY
2 A. That was CCS Medical.
3 Q. Is that on track still in its
4 beginning term or is it now terminable?
5 MR. MORRIS: Objection to form
6 of the question.
7 A. I believe the contract is
8 actually terminated, and I believe it is
9 out of its tail but it may not be
10 completely.
11 Q. Terminated and may or may not be
12 out of the tail?
13 A. Correct.
14 Q. Thank you.
15 How about Petro funds -- oh,
16 sorry. Backing up, I will ask the same
17 question. I presume since you have hired
18 a broker that marketing materials have
19 been prepared for CCS Medical?
20 A. I didn't hire a broker.
21 Q. I thought Cantor Fitzgerald had
22 been hired for CCS Medical?
23 A. You asked me -- you said "I
24 believe you have hired a broker." I have
25 not hired a broker. You can read the

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1 J. SEERY
2 broker, that could mean broker or
3 investment banker. Is that fair?
4 A. That is fair.
5 Q. And that is how you have been
6 answering these questions. Correct?
7 A. Yes.
8 Q. Do you know if PetroCap
9 independently is going to hire a broker or
10 investment banker?
11 A. I don't know.
12 Q. Do you know if any marketing
13 materials have been prepared?
14 A. I don't know.
15 Q. For each of the entities that we
16 just went through, has Highland performed
17 an analysis of total value of each
18 company?
19 A. Which entities?
20 Q. The one we just went through. I
21 will list them for you. Trustway, JHT,
22 Targa, the real property loans as an asset
23 category. Korea Fund, CCS Medical and
24 PetroCap.
25 A. We have values for each of those

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1 J. SEERY
2 for a second. You have certain cost
3 that --
4 MR. MORRIS: Objection to form
5 of the question.
6 (Reporter interruption.)
7 Q. Highland will incur certain
8 costs to wind down, through 2022, under
9 its proposed plan of liquidation. Is that
10 correct?
11 MR. MORRIS: Objection to form
12 of the question.
13 A. No. We project certain costs to
14 operate the business through 2022. Yes.
15 Q. And you made a distinction
16 between my question and the answer you
17 gave. Could you explain to me what that
18 distinction is? I am not picking up on
19 why you made the distinction.
20 A. Because you said "wind down the
21 business." We intend to operate the
22 business.
23 MR. MORRIS: Objection to use of
24 the phrase "plan of liquidation."
25 Q. Is it your position or is it

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1 J. SEERY
2 properties; yes.
3 Q. And I presume that means both a
4 gross value and then a net value to
5 Highland. Correct?
6 A. Yes.
7 Q. And DSI helped you prepare
8 those?
9 A. The answer is no. Each of these
10 are kept in -- Highland has a valuation
11 procedure and methodology and we stay
12 consistent with that valuation procedure
13 and methodology.
14 Q. And those are all records of
15 Highland. Correct?
16 A. Yes.
17 Q. And those have all been written
18 down somewhere. Correct?
19 A. I believe they have all been
20 written down somewhere.
21 Q. And those could be made
22 available to any Chapter 7 trustee that
23 could be appointed?
24 A. Yes.
25 Q. Let's turn our attention here

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1 J. SEERY
2 Highland's position, Mr. Seery, that this
3 is a reorganization?
4 A. Yes.
5 Q. Maybe we have a fundamental
6 misunderstanding. My understanding is
7 that your plan and your analyses says that
8 all assets, substantially all assets will
9 be sold by the end of December 2022. Is
10 that correct?
11 A. That is our assumption. Yes.
12 Q. So how is that not a wind-down?
13 A. Because we intend to operate the
14 business and continue to operate to seek
15 value. I consider a wind-down to be a
16 liquidation where I immediately start
17 looking for a sale every day and try to
18 hit the fastest bid that I can get. That
19 is not what we are trying to do. We are
20 trying to maximize value based on how we
21 look at market conditions using
22 professionals to manage the assets.
23 Q. So your distinction, so I have
24 this correct, is that because you are
25 going to operate in the interim period

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1 J. SEERY

2 Q. You said your base compensation

3 was how much per month?

4 A. \$150,000 per month.

5 Q. Is that just for you?

6 A. That's correct.

7 Q. Do you have to bear any costs

8 out of that 150,000 per month?

9 A. A man's got to eat.

10 Q. Is that the answer? No?

11 A. No; I don't bear any other than

12 my own costs.

13 Q. Other than your personal

14 costs --

15 A. They are business costs. They

16 are business costs. This all doesn't

17 happen for free.

18 Q. So you are going to bear your

19 own overhead, for instance your office

20 space?

21 A. Yes.

22 Q. But to be fair, travel and, for

23 instance, if you had to hire an expert,

24 those would not be costs that you would

25 bear. Correct?

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1 J. SEERY

2 we were talking about how much your fees

3 as the Claimant trustee was going to be

4 and we had left off where you had said

5 there was also some bonus compensation

6 available to you. Could you briefly

7 explain to the court what that bonus

8 structure is?

9 A. It's to be negotiated within

10 45 days of the confirmation.

11 Q. Have you begun those

12 negotiations?

13 A. No.

14 Q. I presume those negotiations

15 will be conducted between yourself and the

16 Unsecured Creditors' Committee?

17 A. I think it will actually be

18 myself and the Oversight Committee, which

19 will consist of the Claimant -- the

20 Creditors' Committee members, at least

21 three of them, as well as one or two

22 independents, depending on certain timing.

23 Q. Have you been provided an ask as

24 of this time?

25 A. I have not, no.

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1 J. SEERY

2 A. That's correct.

3 MR. TAYLOR: I have had a

4 request for a bathroom break by one of

5 the other counsel on the phone. If

6 it's okay, could we take -- I am fine

7 with a ten-minute break. Mr. Seery,

8 if you would like longer that is fine.

9 THE WITNESS: However short you

10 want.

11 MR. TAYLOR: John, do you have a

12 preference?

13 MR. MORRIS: I don't. I

14 appreciate the inquiry. Whatever you

15 want.

16 MR. TAYLOR: Let's take a

17 15-minute break. I have about 11:40

18 Central Time. Let's reconvene at

19 11:58.

20 (Recess.)

21 BY MR. TAYLOR:

22 Q. Mr. Seery, this is Clay Taylor

23 again. Thank you for allowing us to take

24 a break.

25 I believe you were testifying or

Page 129

1 J. SEERY

2 Q. There is also going to be a

3 litigation trust established under the

4 proposed plan. Correct?

5 A. That's correct.

6 Q. How many trustees will there be?

7 A. I believe, just one.

8 Q. What is the proposed

9 compensation for that trustee?

10 A. I don't know yet.

11 Q. Would they be paid on a monthly

12 basis?

13 A. I don't know. I assume he will

14 have some contingency arrangement. He is

15 an experienced litigation trustee, and I

16 assume he will be paid a combination of

17 base plus some upside depending on

18 recoveries.

19 Q. So that would be presumably a

20 monthly fee plus a step contingency

21 arrangement? Is that your experience?

22 A. I am not familiar with the term

23 "step contingency arrangement," but there

24 are innumerable ways to structure

25 contingency fee arrangements in my

<p style="text-align: right;">Page 130</p> <p>1 J. SEERY</p> <p>2 experience.</p> <p>3 Q. That compensation has yet to be</p> <p>4 discussed?</p> <p>5 A. It hasn't been discussed with</p> <p>6 me. No. I won't have any oversight over</p> <p>7 it or responsibility for it.</p> <p>8 Q. Ultimately that will come out</p> <p>9 of -- any fees that are paid under that</p> <p>10 arrangement will come out of the ultimate</p> <p>11 recovery made available to the unsecured</p> <p>12 creditors and any subordinate classes to</p> <p>13 the unsecured creditors. Correct?</p> <p>14 A. As a general statement, I think</p> <p>15 that's correct, yes.</p> <p>16 Q. I believe there has been some</p> <p>17 discussion in the pleadings in this case</p> <p>18 that D&O coverage would be afforded to the</p> <p>19 trustees. Is that correct?</p> <p>20 A. That's correct.</p> <p>21 Q. Have you priced that?</p> <p>22 A. We have.</p> <p>23 Q. How much is that anticipated to</p> <p>24 run per annum?</p> <p>25 A. I haven't -- I don't have that</p>	<p style="text-align: right;">Page 131</p> <p>1 J. SEERY</p> <p>2 specifically at my fingertips. I just</p> <p>3 don't recall the specific amount. We went</p> <p>4 through it in the last few days and I just</p> <p>5 don't have the amount.</p> <p>6 Q. Would you mind providing that</p> <p>7 figure to your counsel to be distributed</p> <p>8 to the objecting creditors?</p> <p>9 A. I don't know --</p> <p>10 MR. MORRIS: We will take it</p> <p>11 under advisement. Douglas had also</p> <p>12 made a request earlier during the</p> <p>13 deposition where I provided the same</p> <p>14 response. Respectfully, I'd ask each</p> <p>15 of you to just send me an email at the</p> <p>16 conclusion of the deposition because I</p> <p>17 am not going to be able to -- I don't</p> <p>18 think I should have the burden of</p> <p>19 keeping track of this. But it's a</p> <p>20 fair request. Send it to us in</p> <p>21 writing and we'll respond promptly.</p> <p>22 MR. TAYLOR: We certainly will</p> <p>23 make a note to send that to you.</p> <p>24 Q. Mr. Seery, if a Chapter 7</p> <p>25 trustee were appointed, they wouldn't</p>
<p style="text-align: right;">Page 132</p> <p>1 J. SEERY</p> <p>2 require D&O coverage. Is that correct?</p> <p>3 MR. MORRIS: Objection to the</p> <p>4 form of the question.</p> <p>5 A. I don't know if a Chapter 7</p> <p>6 trustee would require any D&O or not.</p> <p>7 Q. You are an experienced</p> <p>8 insolvency professional. Correct?</p> <p>9 A. Yes.</p> <p>10 MR. MORRIS: Objection to form</p> <p>11 of the question.</p> <p>12 Q. You do have experience with</p> <p>13 Chapter 7 trustees also. Correct?</p> <p>14 A. Dated, but I have some.</p> <p>15 Q. In your experience, have they</p> <p>16 typically gone out and obtained D&O</p> <p>17 coverage?</p> <p>18 MR. MORRIS: Objection to form</p> <p>19 of the question.</p> <p>20 A. My experience is it depends on</p> <p>21 the Chapter 7 trustee, where they are</p> <p>22 coming from, whether they are in an</p> <p>23 institution that has coverage, whether</p> <p>24 they are going to be using other people.</p> <p>25 They have qualified immunity, but I am not</p>	<p style="text-align: right;">Page 133</p> <p>1 J. SEERY</p> <p>2 an expert in how they deal with their own</p> <p>3 coverages.</p> <p>4 Q. For purposes of the liquidation</p> <p>5 analysis versus the plan analysis that is</p> <p>6 presented in the November and January plan</p> <p>7 analysis versus liquidation analysis, did</p> <p>8 you make some assumptions regarding how</p> <p>9 much D&O coverage would cost under the</p> <p>10 plan?</p> <p>11 A. Under the plan analysis for</p> <p>12 certain, yes.</p> <p>13 Q. And what did you estimate that</p> <p>14 D&O coverage to cost?</p> <p>15 A. I don't recall off the top of my</p> <p>16 head the exact amount. I don't know if we</p> <p>17 have a line item for it, but I just don't</p> <p>18 recall specifically that line item.</p> <p>19 Q. Are those line items contained</p> <p>20 in what I will refer to as the roll-ups</p> <p>21 for the plan versus liquidation analysis?</p> <p>22 A. The full model does contain a</p> <p>23 specific line item for D&O. Yes.</p> <p>24 MR. TAYLOR: Bryan, I will ask</p> <p>25 you to include that on our list of</p>

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1 J. SEERY

2 there. That one jumped out because it was

3 big.

4 Q. What case was that in?

5 A. Lehman brokerage.

6 Q. What was your role in that case?

7 A. I was one of four or five people

8 responsible for selling, chiefly

9 responsible for selling Lehman to

10 Barclays.

11 Q. There was a Chapter 7 trustee in

12 the Lehman case?

13 A. There was a SIPC trustee, which

14 I think is very similar rules with respect

15 to the assets that weren't sold from the

16 broker-dealer. And then there was a

17 Creditors' Committee and reorg of the

18 holding company.

19 Q. How long did that SIPC trustee

20 take to wind down the affairs and assets

21 he or she was responsible for?

22 A. The assets were distributed and

23 liquidated really quickly. Distribution

24 might have taken some time. Litigation

25 took, I think, about seven years for the

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1 J. SEERY

2 MF Global, in that litigation, which was a

3 similar trustee. That was probably a

4 little bit later than the Lehman case in

5 terms of my investments and involvement.

6 And I don't recall any others post that

7 amount of time.

8 Q. I am going to compare and

9 contrast the November liquidation and plan

10 analysis to January's. Specifically

11 focusing on Class 8.

12 MR. TAYLOR: Bryan, if you can

13 pull up November.

14 A. I think you have November up.

15 Q. Sorry. I wasn't looking at the

16 screen. I was looking at my notes. I was

17 unaware it was still up.

18 The plan analysis says there is

19 \$176 million worth of claims for Class 8,

20 general unsecured claims. Correct?

21 A. That is what it says, yes.

22 Q. And in January that number was

23 changed to 313.5 million. Correct?

24 A. For Class 8 unsecureds, I have

25 it in front of me. Yes.

Page 151

1 J. SEERY

2 SIPC trustee.

3 Q. The SIPC trustee was in place

4 for seven years?

5 A. Around that amount of time.

6 Again, most of the assets from the

7 broker-dealer were sold to Barclays, and

8 the SIPC trustee then monetized the

9 remaining assets very quickly and then

10 engaged in litigation.

11 Q. That sale to Barclays was a bulk

12 sale of basically all the non-litigation

13 assets that Lehman held?

14 A. No.

15 Q. What did they not sell to

16 Barclays then?

17 A. It's way more complicated than

18 that.

19 Q. So it's even more complicated

20 than this case?

21 A. Exceedingly.

22 Q. That was the last time you dealt

23 with a Chapter 7 trustee or one

24 substantially similar to this?

25 A. I think so. I had dealings in

Page 153

1 J. SEERY

2 Q. You would agree with me, would

3 you not, that that is the single largest

4 change in this liquidation analysis from

5 November to January. Correct?

6 A. I will accept your

7 representation.

8 Q. In November, under the

9 liquidation analysis, you believe that

10 unsecured creditors received 62.6 cents on

11 the dollar. Correct?

12 A. That is in the January one.

13 Q. No. Actually, let's go ahead

14 and --

15 A. I am sorry. The liquidation

16 analysis?

17 Q. Yes. Sorry. I thought I said

18 that. If I did not, I apologize.

19 A. Yes, 62.6.

20 Q. And as we sit here today, under

21 Highland's revised numbers, what does

22 Highland project unsecured creditors are

23 going to receive?

24 A. 48.16.

25 Q. And under the plan analysis what

Page 154

1 J. SEERY
2 are they going to receive?
3 A. On the one we just filed?
4 62.14.
5 Q. So, you are now projecting that
6 unsecured creditors are going to receive
7 less than what you were predicting under
8 the liquidation plan analysis performed in
9 November. Correct?
10 A. A little bit, yes.
11 Q. Again, you haven't resolicited
12 this plan; correct?
13 A. No.
14 Q. I am curious. A few months ago
15 you thought the spread between what the
16 plan could achieve as far as gross
17 proceeds was approximately 190,000 --
18 sorry. \$190 million. Is that correct?
19 A. If you could pull up the
20 November to determine what you are asking
21 me?
22 Q. I am looking at line 2,
23 estimated proceeds from monetization.
24 Under the plan analysis it shows 190
25 million. Right?

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1 J. SEERY
2 Q. It is approximately \$25 million
3 greater. Correct?
4 A. Yes.
5 Q. What changed in two months to
6 make those recoveries \$25 million greater
7 under a plan rather than liquidation?
8 A. Both the assets in terms of
9 their values and the view of the markets.
10 Q. I would ask you to dig a little
11 deeper than that and provide a little more
12 color.
13 A. Okay.
14 Q. So what accounts for the
15 \$25 million worth of difference in the
16 spread?
17 A. Certain of the assets jumped up
18 in value. Other assets, we have a more
19 robust view of value because of the
20 conditions that we see in the market going
21 forward.
22 Q. So the total asset value
23 increased in your opinion. Correct?
24 A. The total asset value increased
25 as well as the projection for how the

Page 155

1 J. SEERY
2 A. Correct.
3 Q. And under liquidation analysis,
4 it shows 150 million. Right?
5 A. Correct.
6 Q. So the spread was 40 million
7 bucks. Right?
8 A. That is the difference between
9 those numbers, yes.
10 Q. I call it the spread, right, the
11 difference between how much better you
12 think the plan would do rather than a
13 liquidation?
14 A. In estimated proceeds from
15 monetization of assets, yes.
16 Q. In January, if we pull that up,
17 the same line, now under a plan you could
18 achieve 258 million but that a Chapter 7
19 trustee could only recover 191 million.
20 Now the spread is \$65 million, so that
21 spread increased from 40 million to 65
22 million. You would agree that the
23 documents show that. Correct?
24 A. Yes. The difference in those
25 numbers is different and it's greater.

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1 J. SEERY
2 markets look on a forward basis.
3 Q. And why is it that you believe
4 it is now \$25 million more of what you
5 could receive under a plan rather than a
6 liquidation?
7 MR. MORRIS: Objection to the
8 form of the question.
9 A. I think I just answered that.
10 That asset values went up higher and the
11 projection for the future looks better.
12 Q. And why is it that a Chapter 7
13 trustee could not capture that increased
14 value?
15 A. Because a Chapter 7 trustee, in
16 our opinion and our assumption, moves to
17 liquidate the assets quickly and does not
18 have the ability, therefore, to capture
19 that forward projection of market value
20 that we think is more robust.
21 Q. We covered this a little bit
22 before. Other than your prior experience
23 with Chapter 7 trustees, did you conduct
24 any empirical data or go through any
25 empirical data to justify the difference

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1 J. SEERY
2 those non-vested contingent interests have
3 any value. Do you?
4 A. Well, remember, the projections
5 don't contain any recoveries from the
6 litigation trust. So, I think that it
7 would likely be that they don't. But, you
8 know, there are some pretty significant
9 causes of action.
10 Q. And those causes of action, can
11 you run me through some of the more
12 significant ones?
13 MR. MORRIS: Objection to the
14 form.
15 A. The causes of action include
16 fraudulent conveyances, both constructive
17 and actual; diversion of assets. They are
18 still being investigated. The committee
19 has really got the laboring oar on that.
20 But there are significant amounts of
21 transfers that we have seen that are
22 problematic.
23 Q. And you believe that those
24 causes of action have value?
25 A. I believe they do, yes.

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1 J. SEERY
2 be inchoate, reversionary, ethereal. I
3 don't claim to be an expert on the
4 different types of property interests.
5 Q. Let me ask it this way. If you
6 have an understanding, you do; and if you
7 don't, you don't.
8 If the Debtor owned those
9 unvested contingent interests, would you
10 consider that to be property of your
11 estate?
12 MR. MORRIS: Objection to form
13 of the question.
14 A. I probably would consider it to
15 be property of the estate because the
16 definition of property of the estate is so
17 broad and intended to encompass all manner
18 of interests. I think outside of the
19 world of bankruptcy in normal parlance
20 they would be a pretty thin interest.
21 Q. The last time that we were
22 provided a ballot summary -- I'm going off
23 memory here, but I believe 31 Class 8
24 creditors rejected the plan. Does that
25 sound about correct?

Page 215

1 J. SEERY
2 Q. Material, large value?
3 A. I don't know.
4 Q. You have been a professional
5 for, I guess, your whole adult life. Do
6 you believe that these non-vested
7 contingent interests -- strike all that.
8 Have you tried to see whether
9 any third party would be willing to make
10 an offer to get these unvested contingent
11 interests?
12 A. No.
13 Q. Any reason why not?
14 A. No reason to do so. No reason
15 why not.
16 Q. So those unvested contingent
17 interests may have a value, but that value
18 would be in the future and subject to a
19 pretty serious contingency. Correct?
20 A. Yes.
21 Q. They may be a property interest,
22 but inchoate only. Correct?
23 A. That is my belief. I don't
24 claim to be an expert on the different
25 types of property interests, whether they

Page 217

1 J. SEERY
2 A. I don't know.
3 Q. My question is, to your
4 knowledge have any Class 8 creditors
5 switched their vote from reject to accept
6 since the ballot summary was filed?
7 A. Class 8? I don't know the
8 answer to that.
9 MR. RUKAVINA: I will pass the
10 witness. Thank you.
11 MR. MORRIS: Anybody else have
12 any questions?
13 MR. DRAPER: A few follow-up
14 questions.
15 Bryan, can you put up the second
16 email we got, the last page?
17 FURTHER EXAMINATION BY
18 MR. DRAPER:
19 Q. Can you see, Mr. Seery, there is
20 a list of operating expenses on that page?
21 A. Can you just let me know which
22 doc this is? It would be easier if I
23 could actually see the whole page.
24 MR. MORRIS: The last one I sent
25 you a few minutes ago.

HMIT Exhibit No. 20

007332

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In Re:) **Case No. 19-34054-sgj-11**
) Chapter 11
)
HIGHLAND CAPITAL) Dallas, Texas
MANAGEMENT, L.P.,) Wednesday, February 3, 2021
) 9:30 a.m. Docket
Debtor.)
) CONFIRMATION HEARING [1808]
) AGREED MOTION TO ASSUME [1624]
)
) *Continued from 02/02/2021*
_____)

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE STACEY G.C. JERNIGAN,
UNITED STATES BANKRUPTCY JUDGE.

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007333

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24 Proceedings recorded by electronic sound recording;
25 transcript produced by transcription service.

007335

Seery - Direct

48

1 Singaporean.

2 Q Okay. But did the Debtor own more than 20 percent of that
3 entity?

4 A I don't know the specific allocations of equity ownership.

5 Q Okay. What about Pennant (phonetic) Management, LP? Do
6 you know whether the Debtor owns or owned more than 20 percent
7 of that entity?

8 A I don't recall, no.

9 MR. RUKAVINA: You can take that exhibit down, Mr.
10 Vasek.

11 BY MR. RUKAVINA:

12 Q Mr. Seery, very quick, are you familiar with Bankruptcy
13 Rule 2015.3?

14 A I am, yes.

15 Q Okay. Has the Debtor filed any Rule 2015.3 statements in
16 this case?

17 A I don't believe we have.

18 Q Okay.

19 MR. RUKAVINA: Thank you, Your Honor. I'll pass the
20 witness.

21 THE COURT: All right. Any other Objector
22 questioning? None from Mr. Taylor, none from Mr. Draper, none
23 from Ms. Drawhorn?

24 All right. Any cross -- any examination from you, Mr.
25 Morris?

007336

Seery - Cross

49

1 MR. MORRIS: Just one question.

2 THE COURT: Go ahead.

3 CROSS-EXAMINATION

4 BY MR. MORRIS:

5 Q Mr. Seery, do you know why the Debtor has not yet filed
6 the 2015.3 statement?

7 A I have a recollection of it, yes.

8 Q Can you just describe that for the Court?

9 A When we -- when we initially filed, when the Debtor filed
10 and it was transferred over, we started trying to get all the
11 various rules completed. There are, as the Court is aware, at
12 least a thousand and maybe more, more like three thousand,
13 entities in the total corporate structure.

14 We pushed our internal counsel to try to get that done,
15 and were never able to really get it completed. We did not
16 have -- we were told we didn't have separate consolidating
17 statements for every entity, and it would be difficult. And
18 just in the rush of things that happened from the first
19 quarter into the COVID into the year, we just didn't complete
20 that filing. There was no reason for it other than we didn't
21 get it done initially and I think it fell through the cracks.

22 MR. MORRIS: Nothing further, Your Honor.

23 THE COURT: All right. Anything further, Mr.
24 Rukavina?

25 REDIRECT EXAMINATION

007337

1 BY MR. RUKAVINA:

2 Q Mr. Seery, I appreciate that answer. But you never sought
3 leave from the Bankruptcy Court to postpone the deadlines for
4 filing 2015.3, did you?

5 A No. If it hadn't fallen through the cracks, it would have
6 been something we recalled and we would have done something
7 with it. But, frankly, it just fell off the -- through the
8 cracks. We didn't deal with it.

9 Q Okay.

10 MR. RUKAVINA: Thank you, Your Honor. Thank you, Mr.
11 Seery.

12 THE COURT: All right. Any other Objector
13 examination?

14 Mr. Morris, anything further on that point?

15 MR. MORRIS: No, thank you, Your Honor. No further
16 questions.

17 THE COURT: All right. Mr. Seery, thank you. You're
18 excused once again from the witness stand.

19 (The witness is excused.)

20 THE COURT: Your next witness?

21 MR. SEERY: Thank you, Your Honor.

22 THE COURT: Uh-huh.

23 MR. RUKAVINA: Your Honor, I'll call Jason Post. Mr.
24 Post, if you're listening, which I believe you are, if you'll
25 please activate your camera.

1 THE CLERK: All rise.

2 MR. MORRIS: Thank you, Your Honor.

3 (Proceedings concluded at 4:34 p.m.)

4 --oOo--

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CERTIFICATE

21 I certify that the foregoing is a correct transcript from
22 the electronic sound recording of the proceedings in the
above-entitled matter.

23 **/s/ Kathy Rehling**

02/05/2021

24

25

Kathy Rehling, CETD-444
Certified Electronic Court Transcriber

Date

007339

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007342

1 IN THE UNITED STATES BANKRUPTCY COURT
2 FOR THE NORTHERN DISTRICT OF TEXAS
3 DALLAS DIVISION

-----)

4 In Re: Chapter 11

5 HIGHLAND CAPITAL Case No.
6 MANAGEMENT, LP, 19-34054-SGJ 11

Debtor

7 -----
8 HIGHLAND CAPITAL MANAGEMENT, LP,

Plaintiff,

Adversary Proceeding

9 vs. No. 21-03000-SGJ

10 HIGHLAND CAPITAL MANAGEMENT
11 FUND ADVISORS, LP, NEXPOINT
12 ADVISORS, LP,

Defendants.

13
14
15 REMOTE DEPOSITION OF JAMES P. SEERY, JR.

16 January 20, 2021

17 9:00 a.m. EST
18
19
20
21
22

23 Reported by:
24 Debra Stevens, RPR-CRR
25 JOB NO. 188908

J. SEERY

owned and controlled the management entities, then we wouldn't really need an injunction because they wouldn't engage in this type of activity.

Q. I want to just round off the discussion on the two or three-year estimate of the post-confirmation Debtor managing these agreements. You mentioned the monetizing of assets. Again, I am asking you to tell the court why you think it will take two to three years -- in other words, is that the length of time it will take to sell all the assets of the CLO's or sell the management rights? In other words, why two or three years?

A. Two or three years, we believe, is a conservative amount of time to monetize these assets depending on market conditions. So, it gives us comfort that we would be able to do this quite easily. There is a very limited amount of assets. It is likely or possible that some of these assets could be sold in the next six months. The vast majority of the value

1 J. SEERY

2 could go in the next six months if we

3 think that the opportunity is correct.

4 Q. Is it fair to say, then, that

5 within two or three years or perhaps

6 whatever the actual time is, the assets of

7 the CLO's will be sold to where all those

8 assets are monetized?

9 A. Yes.

10 Q. Today, what is an estimate of

11 the value of the assets of the CLO's being

12 managed?

13 MR. MORRIS: Objection to the

14 form of the question.

15 A. I don't have the exact amount.

16 It is somewhere in the \$1.4 billion total

17 amount I believe, and nearly 4 to 5 -- 400

18 to 500 or 450, roughly, is MGM stock.

19 Q. Why does the Debtor believe that

20 those assets should be sold within the

21 next two or three years as opposed to held

22 for a much longer period of time?

23 A. Because that's the best way to

24 monetize the assets. These are not

25 permanent investment vehicles. The

J. SEERY

investors that we have talked to and our own view of the investments are that they are supposed to be monetized.

Q. That is the best way to monetize the assets for whose benefit?

A. The CLO's benefit as well as the investors.

Q. Have you talked to the investors about their goals?

A. Some of them, yes.

Q. Can you remember anyone in particular?

A. HCLOF.

Q. What was their view, HCLOF's view?

A. Monetize the assets as sufficiently as possible based on market conditions with due regard to value.

Q. What about the investors that are dominated or controlled by Mr. Dondero?

A. I haven't spoken to those investors.

Q. You are aware they want a

HMIT Exhibit No. 22

007347

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

-----)
IN RE: Chapter 11
Case No. 19-34054-sgj11
HIGHLAND CAPITAL
MANAGEMENTS, L.P.,
Debtor,
-----)

* * * C O N F I D E N T I A L * * *

REMOTE VIDEOTAPED DEPOSITION OF
JAMES P. SEERY, JR.,
New York, New York
October 17, 2020

JOB NO. 185291

Reported by: BONNIE PRUSZYNSKI, RMR, RPR, CLR

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1 J. Seery

2 that give the committee a lot of control over

3 how the debtor operates day to day, and as

4 part of that process, Highland was required

5 to appoint an independent board. I and a

6 gentleman named John Dubel were agreed upon

7 by the debtor, as well as the official

8 committee, and then Dubel and I selected Russ

9 Nelms as the third director.

10 Q. Okay. And were you subsequently

11 appointed as the chief executive and chief

12 restructuring officer?

13 A. I think you said was I subsequently

14 appointed?

15 Q. That's right.

16 A. Yes.

17 Q. And was that by order of July 16th

18 of 2020?

19 A. I believe so.

20 Q. What in particular led to your

21 appointment to the chief executive and chief

22 restructuring officer?

23 A. I think it's largely on the record,

24 but in particular, it was a much more

25 streamlined way to operate the business, as

Page 16

1 J. Seery

2 Q. How are decisions made on the board

3 of directors, after the July 16th order?

4 MR. MORRIS: Objection to the form

5 of the question.

6 A. I am not -- I'm not trying -- I

7 don't really understand your question. Are

8 you asking me how a corporate board of

9 directors works?

10 Q. Well, how does in particular this

11 corporate board of directors work?

12 A. My experience is that this one

13 works very similar to other boards of

14 directors. So I -- if -- I don't think it's

15 particularly useful for me to go into a

16 dissertation of corporate governance, but we

17 could do that at a different time.

18 Q. Well, maybe what I can more simply

19 ask is, if there was a disagreement between

20 the board members, how would that

21 disagreement be resolved? Would it be a

22 majority vote?

23 A. Yes.

24 Q. So, you don't have any

25 supermajority powers to vote?

Page 15

1 J. Seery

2 opposed to by committee, and because of my

3 experience, the board wanted me to do it. We

4 negotiated with the official committee, and

5 they agreed.

6 Q. So how -- when you were

7 subsequently appointed to the CEO and

8 restructuring officer, how did that -- how

9 did your role change in this process?

10 MR. MORRIS: Objection.

11 A. Many of the day-to-day functions I

12 was already effectively doing anyway since

13 March, and so that part of it didn't change

14 that much, but it more formally cemented me

15 as the lead on the director group and the

16 CEO/CRO of the firm, and then had me directly

17 working with -- obviously, subject to the

18 board, but me directly working with the

19 Highland management team, as well as the

20 committee, to try to push the case towards

21 conclusion.

22 Q. Well, how are decisions made on the

23 board of directors?

24 A. I'm sorry. Can you repeat that?

25 You're muddled.

Page 17

1 J. Seery

2 A. No, I do not.

3 Q. Okay. I'm going to send out the

4 first exhibit for this deposition.

5 A. Counsel, if I can make a

6 suggestion. When you are speaking, can you

7 get closer to your microphone, because when

8 you step back, it's very difficult -- or lean

9 back, it's very difficult to hear you.

10 Q. All right. I apologize. I will

11 try to do better.

12 A. No worries.

13 Q. So, I have just sent out the first

14 deposition exhibit, which is going to be

15 labeled Dondero Exhibit A.

16 (Seery Exhibit 1, Proof of Claim

17 Number 23 marked for identification, as

18 of this date.)

19 Q. Can you let me know when you have

20 received it.

21 MR. MORRIS: I don't have it yet,

22 John.

23 I got it now.

24 MR. WILSON: Okay. It was about a

25 one-megabyte file, so it might take a

Page 22

1 J. Seery

2 it. I don't know if I have reviewed this

3 specific document.

4 Q. Okay. And when did you become

5 aware of the proof of claim that Acis filed?

6 A. Early in the case.

7 Q. And when you say "early in the

8 case," what does that mean?

9 A. Sometime in January.

10 Q. So, shortly after you were

11 appointed to the board of directors, you

12 became familiar with Acis's proof of claim?

13 MR. MORRIS: Objection.

14 A. If proof of claim means the claim

15 that they filed in the case and the general

16 terms of it, yes. They are a member of the

17 official committee. The first hearing that

18 we showed up at, we met with them for lunch

19 after the hearing, and with respect to the

20 proof of claim, before I was even appointed,

21 one should assume and I will say that I

22 checked out who was on the committee and what

23 their purported claims were.

24 Q. Okay. Fair enough.

25 Now, let's go back to the second

Page 24

1 J. Seery

2 MR. MORRIS: -- to the form of the

3 question.

4 Q. So, would it be fair to say that

5 you have not made any analysis with respect

6 to the Acis proof of claim independent of

7 what your attorneys have done?

8 MR. MORRIS: Objection to the form

9 of --

10 A. That would not be fair, no.

11 MR. MORRIS: -- the question.

12 Q. I'm sorry. I didn't catch the

13 answer.

14 A. That would not be fair, no.

15 Q. Well, so, I guess can you describe

16 for me the level of analysis that you

17 conducted on your own?

18 A. With or without the assistance of

19 my counsel?

20 Q. Well, I guess both. Maybe you're

21 working hand in hand with your counsel, but

22 I'm just trying to understand to what extent

23 you analyzed this yourself, and you

24 understand the arguments that were made in

25 the -- in the -- I guess the Highland

Page 23

1 J. Seery

2 part of the earlier question, but did you

3 attempt to make any type of independent

4 analysis of Acis's proof of claim?

5 MR. MORRIS: Objection to the form

6 of the question.

7 A. I'm not sure what you're asking,

8 Counsel.

9 Q. I'm asking if you --

10 A. By "independent," when you say

11 "independent," the word typically means on my

12 own. A separate independent assessment

13 without the assistance of counsel?

14 Q. I think that's what I am asking

15 you, because you referred to your counsel

16 earlier. Did you, without the assistance of

17 your counsel, attempt to undertake an

18 analysis of this claim?

19 A. No.

20 Q. So, all the legal arguments that

21 were ultimately advanced by Highland were the

22 product of your counsel and not you

23 individually?

24 MR. MORRIS: Objection --

25 A. That's correct.

Page 25

1 J. Seery

2 objection to proof of claim.

3 A. Oh, I understand the arguments in

4 the Highland objection to proof of claim,

5 yes.

6 Q. But your testimony is that those

7 arguments were developed by your counsel and

8 not you?

9 A. That is not my testimony.

10 MR. MORRIS: Objection to the form

11 of the question.

12 Q. So -- well, help me understand how

13 those arguments came about.

14 MR. MORRIS: Without disclosing

15 attorney-client privileged

16 communications.

17 A. I believe before I -- I believe I

18 testified just currently here, a couple

19 minutes ago, that before I was even

20 appointed, I determined who the players were

21 on the committee and generally tried to get

22 an assessment or understanding of what their

23 claims were. In fact, they were the parties

24 that interviewed prospective candidates for

25 the board along with the debtor.

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1 J. Seery

2 committee members.

3 Q. You said with the exception of one

4 of the committee members, of the convenience

5 class?

6 A. Yes. Yep.

7 Q. So, you don't have a belief as you

8 sit there today whether they will accept the

9 plan?

10 A. I think I hope that they will. I

11 don't know if I, I have a belief that they

12 will. It will be up to everybody. I think

13 that the issues that we have with respect to

14 monetization in terms of timing, and the

15 issues we have with respect to larger

16 litigation claims and the timing and

17 litigating those, that it makes economic

18 sense for those smaller claims to take a

19 discounted payout and -- and end their

20 involvement in the case.

21 So, I would think economically that

22 they should, if people are economically

23 rational actors, which typically they tend to

24 be. So, my hope is that they will. I'm not

25 quibbling with your term "belief." I just

Page 80

1 J. Seery

2 Q. What do you perceive as the

3 allowable amount of the UBS claim?

4 A. I -- "perceive" is a weird word. I

5 think the allowed amount in my estimation

6 should be zero.

7 Q. Okay. Why do you believe that?

8 A. Because I don't believe that UBS

9 has a legitimate claim against the debtor.

10 Q. Can you explain the basis for that

11 belief?

12 MR. MORRIS: Last question.

13 A. It's in -- it's in substantial

14 papers that have been filed to date. It's in

15 summary judgment papers that were filed.

16 But very quickly, their judgment is

17 against two subsidiaries, foreign

18 subsidiaries. The 20th largest bank in the

19 world made a very sophisticated investment in

20 a CDO product. Its documents expressly

21 provide that 100 percent of the risk will be

22 borne by those foreign subs. It expressly,

23 expressly excludes HCMLP as a defendant.

24 It initially brought a claim

25 against HCMLP and it lost. It then tried to

Page 79

1 J. Seery

2 don't know what you mean. I hope they will,

3 and I anticipate they will.

4 Q. Okay. Fair enough.

5 In your understanding, is the plan

6 confirmable under the bankruptcy code if the

7 convenience class accepts and the unsecured

8 class does not?

9 MR. MORRIS: Objection to the form

10 of the question, to the extent it calls

11 for a legal conclusion.

12 A. My understanding is that it is.

13 Q. Now, what do you foresee as the

14 allowable amount of the UBS claim?

15 MR. MORRIS: Objection to the form

16 of the question. How is this related to

17 the Acis settlement?

18 MR. WILSON: I don't think I have

19 to answer that. I asked a question.

20 MR. MORRIS: I am going to put you

21 on notice that if we go too far afield

22 from the deposition topic, I will direct

23 the witness not to answer, but he can

24 answer this one.

25 A. What was the question?

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1 J. Seery

2 cobble together other claims, and it was

3 denied on res judicata grounds by the

4 Appellate Division in New York.

5 Subsequently, it's tried to pursue an alter

6 ego and then a fraudulent conveyance claim.

7 Both of those claims require significant

8 facts that aren't going to be available to

9 UBS because of the original terms of the deal

10 and because of the facts related to the

11 purported fraudulent conveyances, including

12 significant releases, as well as value

13 exchanged.

14 This could be hours. I'm not sure

15 where it gets you.

16 Q. That's fair. I understand. I just

17 wanted to hear your position.

18 How likely is it in your estimation

19 that there will be room for equity to

20 participate under the currently filed plan?

21 MR. MORRIS: Objection to the form

22 of the question.

23 A. I think under the filed plan,

24 ultimately equity will get a return, but it's

25 dependent on a number of things, first and

Page 118

1 J. Seery

2 A. Yeah. It's New York Supreme, so I

3 think it was a New York firm. I just -- the

4 name is just at the tip of my tongue. I

5 cannot recall it.

6 Q. And I just have a couple more

7 questions based on Mr. Wilson's questions.

8 I believe you testified that you

9 had spoken to somebody on the committee that

10 was going to be placed in the convenience

11 class. Do you recall that?

12 A. Yes.

13 Q. Okay. Was that person Meta? Is

14 that the person that is being put in the

15 convenience class?

16 A. I think Meta is the name of the

17 company, not the guy. The only Metta I

18 recall as a person was a player for the

19 Pacers, but that is the name of the company.

20 Q. That is the name of the creditor

21 that would be placed in that class?

22 A. That's correct.

23 Q. And have they indicated that they

24 are going to vote for the plan or not?

25 Because I think you had said that they had

Page 120

1 J. Seery

2 satisfied, then the contingent interests come

3 into play and can receive a recovery.

4 Q. And I want to be very precise here,

5 and if we need to look at the plan, we will.

6 The plan provides that the existing equity in

7 the debtor is going to be canceled; correct?

8 A. Yes.

9 Q. And new equity under the plan is

10 actually going to be issued to the claimant

11 trust; correct?

12 A. Correct.

13 Q. Okay. And then the creditors in

14 class seven, I believe it is, they get

15 interest in the trust; correct?

16 A. Correct.

17 Q. And then the plan also provides,

18 though, that equity existing -- and I will be

19 more specific. The class A, B and C limited

20 partnership interests receive, quote/unquote,

21 contingent interests in the claimant trust;

22 is that correct?

23 A. That's right.

24 Q. So, my question is very direct.

25 Are the class A and the class B-C limited

Page 119

1 J. Seery

2 indicated they're going --

3 A. Not to my knowledge, but they have

4 been an active participant in the -- in the

5 case as a committee member, and so I believe

6 they will vote for it, because the committee

7 has helped craft that, or at least been in

8 negotiations around the class. I am assuming

9 that if they didn't like it, I would have

10 heard, but I don't really know.

11 Q. Okay. You testified that -- when

12 we talked about that the debtor is

13 potentially solvent, that ultimately equity

14 will get a return, and I guess my question

15 is: How is that possible under the debtor's

16 plan, because the debtor's plan cancels

17 equity; correct?

18 A. The debtor's plan cancels equity

19 but reissues limited partnership interests

20 to -- or trust interests, I'm sorry, to the

21 creditors, which are, for lack of a better

22 term, senior interests, and to the equity,

23 for lack of a better term, as contingent

24 interests, so that if the senior interests

25 are all paid off and the claims are all

Page 121

1 J. Seery

2 partnership interests, the ones classified in

3 classes nine and class ten, are they

4 receiving the, quote/unquote, contingent

5 interest on account of their existing equity

6 they own in the debtor?

7 A. I am not sure if technically that

8 is correct, or if it's because once the other

9 interests are satisfied, they come into

10 place, because they are contingent, but

11 for -- without being specific or bankruptcy

12 specific, on account of, they're not getting

13 it for a charitable purpose. They are

14 getting it because they are equity holders,

15 and to the extent that value exceeds the

16 claims, because the denominator is not set,

17 nor is the numerator, as we talked about,

18 then those interests would come into -- would

19 ripen, if you will, and be entitled to

20 recovery.

21 Q. I'm going to ask this question a

22 different way, and your answer may be the

23 same. What is the basis for class A, B and C

24 limited partnership interest holders

25 receiving the contingent interests in the

Page 122

1 J. Seery

2 claimant trust?

3 A. I'm not sure if it's what you're

4 asking, but it's because the enterprise may

5 be solvent.

6 Q. That will -- that will complete

7 kind of what my follow-up is, and so I will

8 kind of get into kind of my more specific

9 questions, or I guess my questions now.

10 I think I asked you, you have some

11 experience -- you are a lawyer. You have

12 some experience in restructuring bankruptcy;

13 correct?

14 A. Yes.

15 Q. You generally understand the

16 bankruptcy code, understand what it can and

17 can't provide; correct?

18 A. Yes.

19 Q. Included in that, you are -- you

20 have a, what I will call baseline, and

21 Mr. Morris will object, understanding of the

22 requirements for confirmation under

23 Section 1129?

24 MR. MORRIS: Objection to the form

25 of the question.

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1 J. Seery

2 believe the court should approve the

3 settlement that is proposed in Docket Number

4 1087 and in 1088 and what's been marked in

5 this deposition as Seery Exhibit Number 4,

6 Exhibit 5, and Exhibit 6?

7 A. Without looking at the exhibits, I

8 believe the court should approve the

9 settlement struck with Acis and Terry.

10 Q. And implicit in that is that you

11 believe that the settlement meets the

12 requirements under Rule 9019; is that

13 correct?

14 A. That's correct.

15 Q. Are you the sole person that makes

16 that decision on behalf of the debtor, or did

17 you have to get approval from the indirect --

18 from the independent directors to approve

19 this settlement?

20 A. The board approved the settlement.

21 Q. So, implicit in that is that you

22 discussed the settlement with the independent

23 directors?

24 A. That's correct.

25 Q. Did you ever discuss that

Page 123

1 J. Seery

2 A. Yes.

3 Q. And I am not asking specific, but

4 you do have a general understanding of what

5 is necessary in order to get a settlement

6 approved under Bankruptcy Rule 9019; correct?

7 MR. MORRIS: Objection.

8 A. Yes.

9 Q. Okay. I will ask this question a

10 little bit different than Mr. Wilson did.

11 What's your understanding of what must be

12 shown, and again, I'm not asking for a legal

13 conclusion, the standards are set out in the

14 motion, but from a layperson, what is your

15 general understanding of what must be shown

16 in order to get a settlement approved under

17 Rule 9019?

18 A. I believe that the settlement must

19 be reasonable, considering the time, the

20 cost, the risk, the benefit to creditors, the

21 benefit to the estate, that overall it should

22 be viewed as fair and equitable, and that,

23 you know, in sum, it should be viewed as

24 beneficial to the estate.

25 Q. And as the CEO of the debtor, you

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1 J. Seery

2 settlement with independent directors outside

3 of the presence of counsel?

4 A. I'm pausing because I don't know.

5 I doubt it, because this settlement, you

6 know, we spent a lot of time with counsel,

7 and we are -- we are very careful about

8 making sure that we get proper advice in

9 terms of being exhaustive on going through

10 each of the items, and this was a settlement

11 that was part of a mediation that, you know,

12 the directors participated in, and we had our

13 own breakout rooms with counsel.

14 So, I -- my guess is that we

15 didn't. My belief is that we didn't. I just

16 don't recall any specific. Is it possible

17 that we had a passing conversation without

18 counsel? It's possible.

19 Q. You're a smart guy. You are a

20 lawyer. You know where I am getting at here.

21 If you always discussed it with the

22 directors, I'm not going to get into that,

23 that's privileged communications. But if you

24 talked with the other directors outside the

25 presence of counsel, I want to know what the

HMIT Exhibit No. 23

007354

EXHIBIT 42

ASSIGNMENT AGREEMENT

This Assignment Agreement, effective as of August 11, 2021 (this “Agreement”), is being entered by and among the Highland Claimant Trust (the “Claimant Trust”) and the Highland Litigation Sub-Trust (the “Litigation Sub-Trust”) for the transfer and assignment of certain claims and causes of action.

RECITALS

WHEREAS, on October 16, 2019, Highland Capital Management, L.P. (the “Debtor”) filed with the United States Bankruptcy Court for the District of Delaware, a voluntary petition for relief under chapter 11 of the Bankruptcy Code, which case was subsequently transferred to the Bankruptcy Court for the Northern District of Texas, Dallas Division (the “Bankruptcy Court”) and captioned *In re Highland Capital Management, L.P.*, Case No. 19-34054-sgj11 (the “Chapter 11 Case”);

WHEREAS, on November 24, 2020, the Debtor filed the *Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified)* [Docket No. 1808] (as may be amended, supplemented, or otherwise modified from time to time, the “Plan”),¹ which was confirmed by the Bankruptcy Court on February 22, 2021, pursuant to the *Findings of Fact and Order Confirming Plan of Reorganization for the Debtor* [Docket No. 1943] (the “Confirmation Order”);

WHEREAS, on August 11, 2021, the Effective Date of the Plan occurred [Docket No. 2700] and, pursuant to the Plan, the Claimant Trust and the Litigation Sub-Trust subsequently came into existence;

WHEREAS, pursuant to the Plan, the Causes of Action were vested in the Claimant Trust and the Estate Claims that were Causes of Action were transferred from the Claimant Trust to the Litigation Sub-Trust;

WHEREAS, the purpose of the Litigation Sub-Trust is to investigate, prosecute, settle, or otherwise resolve claims and causes of action for the benefit of the Claimant Trust Beneficiaries;

WHEREAS, pursuant to Section 2.6 of the Litigation Sub-Trust Agreement, the Claimant Trustee shall, upon reasonable request of the Litigation Trustee, execute, acknowledge and deliver such further instruments and do such further acts as may be necessary or proper to transfer to the Litigation Trustee any portion of the Claimant Trust Assets intended to be conveyed by the Litigation Sub-Trust Agreement and in the Plan;

WHEREAS, the Litigation Trustee, at the direction of the Claimant Trust Oversight Committee, has requested that the Claimant Trustee assign to the Litigation Sub-Trust all Causes of Action not otherwise held by the Litigation Sub-Trust to the Litigation Sub-Trust, other than those Causes of Action that (1) the Claimant Trustee is currently pursuing, and (2) the Claimant Trustee intends to pursue on behalf of entities managed by the Reorganized Debtor (together, the “

¹ Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Plan.

Claimant Trust Causes of Action”).

AGREEMENT

In furtherance of the Plan and for good and valuable consideration, the sufficiency of which is hereby acknowledged, the Claimant Trust hereby irrevocably transfers and assigns to the Litigation Sub-Trust any and all Causes of Action not previously transferred or assigned by operation of the Plan, the Litigation Sub-Trust Agreement, or otherwise, except for the Claimant Trust Causes of Action, effective as of the date below. For the avoidance of doubt, to the extent not already held by the Litigation Sub-Trust, all Causes of Action that will be included in the Litigation Trustee’s complaint filed on or before October 15, 2021 are assigned to the Litigation Sub-Trust.

Executed as of October 8, 2021

Claimant Trust

By: 

James P. Seery, Jr., not individually but solely in his capacity as the Claimant Trustee

Litigation Sub-Trust

By: 

Marc Kirschner, not individually but solely in his capacity as the Litigation Trustee

HMIT Exhibit No. 24

007358

From: [Michele Naudin](#)
To: [REDACTED]
Cc: [REDACTED]
Subject: FW: Follow up from Friday's call
Date: Thursday, February 16, 2023 1:57:42 PM
Attachments: [image001.jpg](#)

MICHELE NAUDIN | Attorney

LynnPinkerHurstSchwegmann

Direct 214 292 3648

Mobile 469 705 2825

mnaudin@lynnllp.com

2100 Ross Avenue, Suite 2700

Dallas, Texas 75201

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From: John A. Morris <jmorris@pszjlaw.com>
Sent: Thursday, February 16, 2023 1:54 PM
To: Michele Naudin <mnaudin@lynnllp.com>
Cc: Hayley R. Winograd <hwinograd@pszjlaw.com>; Michael K. Hurst <MHurst@lynnllp.com>; Laura M. Garcia <lgarcia@weinsteinklein.com>
Subject: RE: Follow up from Friday's call

Michele:

The answers to your questions as follows:

1. Mr. Seery's iPhone is personal in nature. While it is backed up to iCloud, that back-up does not contain deleted items, whether deleted manually or as part of an automatic setting.
2. The automatic text deletion setting is currently set at one year; texts that are manually or automatically deleted are not retrievable; and
3. We have provided all texts and screenshots that we could locate based on a reasonable search. As I mentioned, we're glad that you had the screenshot of Goldsmith bringing documents to a storage facility because we both recalled that Jim sent that to me and I could

not locate it (and you can see from Jim's response that he told Daugherty to "knock it off"). As you know, our ability to locate documents is based on search terms. If Jim forwarded a screen shot (or anything else) without comment (which is possible), I would only be able to find it by reviewing every email received from Jim – which, after three years of daily communications, we don't believe we are required to do. To be as helpful as we can, I recall Jim sending several screenshots to me over the years including: (a) the one of Goldsmith, (b) one of Scott speaking with someone in front of a house (which I think you sent), (c) one of Thomas Surgent's car (obviously sent in 2020). Jim does currently not have any of those pictures on his iPhone. And obviously, as verified by the information produced, Jim never requested these unsolicited pictures or did anything with them (other than forward them to me).

To summarize what we also discussed:

1. Jim and I accepted service of the subpoenas despite the fact that service was improper;
2. We produced all responsive emails, pictures, and texts we located after conducting a reasonable search;
3. We immediately withdrew the objection that you challenged to make clear we were not hiding anything;
4. We've acknowledged receiving (or sharing) certain texts that you obtained elsewhere;
5. One of those texts clearly shows Jim's discomfort with the photo of Ms. Goldsmith;
6. My text with Dandeneau (Scott's lawyer for that purpose) during the remand hearing shows I was ready to "pounce" on Daugherty if he even suggested that he was working on behalf or at that direction of Jim or the Trust.

Please confirm that Jim and I have done all we need to do to comply the subpoena. Otherwise, please let me know what questions remain.

Regards,

John

John A. Morris

Pachulski Stang Ziehl & Jones LLP

Direct Dial: 212.561.7760

Tel: 212.561.7700 | Fax: 212.561.7777

jmorris@pszjlaw.com

[vCard](#) | [Bio](#) | [LinkedIn](#)



Los Angeles | San Francisco | Wilmington, DE | New York | Houston

From: Michele Naudin [<mailto:mnaudin@lynnllp.com>]

Sent: Monday, February 13, 2023 11:07 AM

To: John A. Morris <jmorris@pszjlaw.com>

Cc: Hayley R. Winograd <hwinograd@pszjlaw.com>; Michael K. Hurst <MHurst@lynnllp.com>; Laura M. Garcia <lgarcia@weinsteinklein.com>

Subject: Follow up from Friday's call

Mr. Morris,

As a follow up from Friday's call, we look forward to hearing from you this week as to (1) whether Seery's data backed up to the Cloud, (2) Seery's automatic deletion settings, if any and what the setting is, and (3) confirm that you could not locate another email for any other contemporaneous screenshots of Daugherty's texts sent to Seery, which you stated that Seery screenshotted and sent to you from time to time.

Thank you,

MICHELE NAUDIN | Attorney

LynnPinkerHurstSchwegmann

Direct 214 292 3648

Mobile 469 705 2825

mnaudin@lynnllp.com

2100 Ross Avenue, Suite 2700

Dallas, Texas 75201

lynnllp.com

HMIT Exhibit No. 25

007362

From: [Giles, Courtney](#)
Cc: [Hartmann, Michelle](#); [Cahn, Blaire](#); [Zimmerman, Laura](#)
Subject: FW: Kirschner v. Dondero et al.: Letter re text messages
Date: Friday, March 10, 2023 3:26:41 PM
Attachments: [image001.png](#)

Thanks,

Courtney Giles

Associate, Litigation
Baker & McKenzie LLP
700 Louisiana, Suite 3000
Houston, TX 77002
United States
Tel: +1 713 427 5000
Direct: +1 713 427 5086
Fax: +1 713 427 5099
courtney.giles@bakermckenzie.com

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McKenzie.**

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From: John A. Morris <jmorris@pszjlaw.com>
Sent: Friday, March 10, 2023 3:20 PM
To: Hartmann, Michelle <Michelle.Hartmann@bakermckenzie.com>
Cc: Jeff Pomerantz <jpomerantz@pszjlaw.com>; Gregory V. Demo <GDemo@pszjlaw.com>; Hayley R. Winograd <hwinograd@pszjlaw.com>; 'Robert Loigman' <robertloigman@quinnemanuel.com>; 'Aaron Lawrence' <aaronlawrence@quinnemanuel.com>; Giles, Courtney <Courtney.Giles@bakermckenzie.com>
Subject: [EXTERNAL] Kirschner v. Dondero et al.: Letter re text messages

Michelle:

As you know, Mr. Seery is (among other things) the CEO of our client, Highland Capital Management, L.P., and we represent him in that capacity, not in his personal, individual capacity.

In response to the communication, please be advised that Mr. Seery recently suspended his deletion setting; separately, all potentially relevant documents in his possession, custody, and control have been preserved.

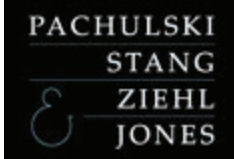
Regards,

John

John A. Morris

007363

Pachulski Stang Ziehl & Jones LLP
Direct Dial: 212.561.7760
Tel: 212.561.7700 | Fax: 212.561.7777
jmorris@pszjlaw.com
[vCard](#) | [Bio](#) | [LinkedIn](#)



Los Angeles | San Francisco | Wilmington, DE | New York | Houston

From: Giles, Courtney [<mailto:Courtney.Giles@bakermckenzie.com>]
Sent: Tuesday, March 7, 2023 10:05 PM
To: robertloigman@quinnemanuel.com; Aaron Lawrence <aaronlawrence@quinnemanuel.com>; Hartmann, Michelle <Michelle.Hartmann@bakermckenzie.com>
Cc: Dandeneau, Debra A. <Debra.Dandeneau@bakermckenzie.com>; qe-highland <qe-highland@quinnemanuel.com>; Jeff Pomerantz <jpomerantz@pszjlaw.com>; John A. Morris <jmorris@pszjlaw.com>; Gregory V. Demo <GDemo@pszjlaw.com>; Hayley R. Winograd <hwinograd@pszjlaw.com>
Subject: RE: Kirschner v. Dondero et al.: Letter re text messages

Counsel,

Please see the attached correspondence.

Best regards,

Courtney Giles
Associate, Litigation
Baker & McKenzie LLP
700 Louisiana, Suite 3000
Houston, TX 77002
United States
Tel: +1 713 427 5000
Direct: +1 713 427 5086
Fax: +1 713 427 5099
courtney.giles@bakermckenzie.com



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From: Aaron Lawrence <aaronlawrence@quinnemanuel.com>

007364

Sent: Tuesday, March 7, 2023 2:08 PM

To: Hartmann, Michelle <Michelle.Hartmann@bakermckenzie.com>

Cc: Giles, Courtney <Courtney.Giles@bakermckenzie.com>; Dandeneau, Debra A. <Debra.Dandeneau@bakermckenzie.com>; qe-highland <qe-highland@quinnemanuel.com>; 'jpomerantz@pszjlaw.com' <jpomerantz@pszjlaw.com>; John A. Morris <jmorris@pszjlaw.com>; Gregory V. Demo <GDemo@pszjlaw.com>; Hayley R. Winograd <hwinograd@pszjlaw.com>

Subject: [EXTERNAL] Kirschner v. Dondero et al.: Letter re text messages

Michelle,

Please see the attached correspondence.

Best,

Aaron Lawrence

Associate

Quinn Emanuel Urquhart & Sullivan, LLP

51 Madison Avenue, 22nd Floor

New York, NY 10010

Direct

212-849-7000 Main Office Number

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007365

HMIT Exhibit No. 26

007366

CLAIMANT TRUST AGREEMENT

This Claimant Trust Agreement, effective as of August 11, 2021 (as may be amended, supplemented, or otherwise modified in accordance with the terms hereof, this “Agreement”), by and among Highland Capital Management, L.P. (as debtor and debtor-in-possession, the “Debtor”), as settlor, and James P. Seery, Jr., as trustee (the “Claimant Trustee”), and Wilmington Trust, National Association, a national banking association (“WTNA”), as Delaware trustee (in such capacity hereunder, and not in its individual capacity, the “Delaware Trustee,” and together with the Debtor and the Claimant Trustee, the “Parties”) for the benefit of the Claimant Trust Beneficiaries entitled to the Claimant Trust Assets.

RECITALS

WHEREAS, on October 16, 2019, Highland Capital Management, L.P. filed with the United States Bankruptcy Court for the District of Delaware, a voluntary petition for relief under chapter 11 of the Bankruptcy Code, which case was subsequently transferred to the Bankruptcy Court for the Northern District of Texas, Dallas Division (the “Bankruptcy Court”) and captioned *In re Highland Capital Management, L.P.*, Case No. 19-34054-sgj11 (the “Chapter 11 Case”);

WHEREAS, on November 24, 2020, the Debtor filed the *Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1472] (as may be amended, supplemented, or otherwise modified from time to time, the “Plan”),¹ which was confirmed by the Bankruptcy Court on February 22, 2021, pursuant to the *Findings of Fact and Order Confirming Plan of Reorganization for the Debtor* [Docket No. 1943] (the “Confirmation Order”);

WHEREAS, this Agreement, including all exhibits hereto, is the “Claimant Trust Agreement” described in the Plan and shall be executed on or before the Effective Date in order to facilitate implementation of the Plan; and

WHEREAS, pursuant to the Plan and Confirmation Order, the Claimant Trust Assets are to be transferred to the Claimant Trust (each as defined herein) created and evidenced by this Agreement so that (i) the Claimant Trust Assets can be held in a trust for the benefit of the Claimant Trust Beneficiaries entitled thereto in accordance with Treasury Regulation Section 301.7701-4(d) for the objectives and purposes set forth herein and in the Plan; (ii) the Claimant Trust Assets can be monetized; (iii) the Claimant Trust will transfer Estate Claims to the Litigation Sub-Trust to be prosecuted, settled, abandoned, or resolved as may be determined by the Litigation Trustee in accordance with the terms of the Litigation Sub-Trust Agreement, for the benefit of the Claimant Trust; (iv) proceeds of the Claimant Trust Assets, including Estate Claims, may be distributed to the Claimant Trust Beneficiaries² in accordance with the Plan; (v) the Claimant Trustee can resolve

¹ Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Plan. The confirmed Plan included certain amendments filed on February 1, 2021. *See Debtor’s Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified)*, [Docket No. 1875], Exh. B.

² For the avoidance of doubt, and as set forth in the Plan, Holders of Class A Limited Partnership Interests and Class B/C Limited Partnership Interests will be Claimant Trust Beneficiaries only upon certification by the Claimant Trustee that the Holders of such Claims have been paid indefeasibly in full plus, to the extent applicable, post-petition interest in accordance with the terms and conditions set forth herein and in the Plan.

Disputed Claims as set forth herein and in the Plan; and (vi) administrative services relating to the activities of the Claimant Trust and relating to the implementation of the Plan can be performed by the Claimant Trustee.

DECLARATION OF TRUST

NOW, THEREFORE, in order to declare the terms and conditions hereof, and in consideration of the premises and mutual agreements herein contained, the confirmation of the Plan and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Debtor, the Claimant Trustee, and the Delaware Trustee have executed this Agreement for the benefit of the Claimant Trust Beneficiaries entitled to share in the Claimant Trust Assets and, at the direction of such Claimant Trust Beneficiaries as provided for in the Plan.

TO HAVE AND TO HOLD unto the Claimant Trustee and his successors or assigns in trust, under and subject to the terms and conditions set forth herein and for the benefit of the Claimant Trust Beneficiaries, and for the performance of and compliance with the terms hereof and of the Plan; provided, however, that upon termination of the Claimant Trust in accordance with Article IX hereof, this Claimant Trust Agreement shall cease, terminate, and be of no further force and effect, unless otherwise specifically provided for herein.

IT IS FURTHER COVENANTED AND DECLARED that the Claimant Trust Assets are to be strictly held and applied by the Claimant Trustee subject to the specific terms set forth below.

ARTICLE I. **DEFINITION AND TERMS**

1.1 Certain Definitions. Unless the context shall otherwise require and except as contained in this Section 1.1 or as otherwise defined herein, the capitalized terms used herein shall have the respective meanings assigned thereto in the “Definitions,” Section 1.1 of the Plan or if not defined therein, shall have the meanings assigned thereto in the applicable Section of the Plan. For all purposes of this Agreement, the following terms shall have the following meanings:

(a) “Acis” means collectively, Acis Capital Management, L.P. and Acis Capital Management GP, LLP.

(b) “Bankruptcy Court” has the meaning set forth in the Recitals hereof.

(c) “Cause” means (i) a Person’s willful failure to perform his material duties hereunder (which material duties shall include, without limitation, with respect to a Member, or to the extent applicable, the Claimant Trustee, regular attendance at regularly scheduled meetings of the Oversight Board), which is not remedied within 30 days of notice; (ii) a Person’s commission of an act of fraud, theft, or embezzlement during the performance of his or her duties hereunder; (iii) a Person’s conviction of a felony (other than a felony that does not involve fraud, theft, embezzlement, or jail time) with all appeals having been exhausted or appeal periods lapsed; or (iv) a Person’s gross negligence, bad faith, willful misconduct, or knowing violation of law in the performance of his or her duties hereunder.

(d) “Claimant Trust Agreement” means this Agreement.

(e) “Claimant Trustee” means James P. Seery, Jr., as the initial “Claimant Trustee” hereunder and as defined in the Plan, and any successor Claimant Trustee that may be appointed pursuant to the terms of this Agreement.

(f) “Claimant Trust” means the “Highland Claimant Trust” established in accordance with the Delaware Statutory Trust Act and Treasury Regulation Section 301.7701-4(d) pursuant to this Agreement.

(g) “Claimant Trust Assets” means (i) other than the Reorganized Debtor Assets (which are expressly excluded from this definition), all other Assets of the Estate, including, but not limited to, all Causes of Action, Available Cash, any proceeds realized or received from such Assets, all rights of setoff, recoupment, and other defenses with respect, relating to, or arising from such Assets, (ii) any Assets transferred by the Reorganized Debtor to the Claimant Trust on or after the Effective Date, (iii) the limited partnership interests in the Reorganized Debtor, and (iv) the ownership interests in New GP LLC. For the avoidance of doubt, any Causes of Action that, for any reason, are not capable of being transferred to the Claimant Trust shall constitute Reorganized Debtor Assets.

(h) “Claimant Trust Beneficiaries” means the Holders of Allowed General Unsecured Claims, Holders of Allowed Subordinated Claims, and, only upon certification by the Claimant Trustee that the Holders of such Claims have been paid indefeasibly in full plus, to the extent applicable, post-petition interest at the federal judgment rate in accordance with the terms and conditions set forth herein, Holders of Allowed Class B/C Limited Partnership Interests, and Holders of Allowed Class A Limited Partnership Interests.

(i) “Claimant Trust Expense Cash Reserve” means \$[•] million in Cash to be funded pursuant to the Plan into a bank account of the Claimant Trust on or before the Effective Date for the purpose of paying Claimant Trust Expenses in accordance herewith.

(j) “Claimant Trust Expenses” means the costs, expenses, liabilities and obligations incurred by the Claimant Trust and/or the Claimant Trustee in administering and conducting the affairs of the Claimant Trust, and otherwise carrying out the terms of the Claimant Trust and the Plan on behalf of the Claimant Trust, including without any limitation, any taxes owed by the Claimant Trust, and the fees and expenses of the Claimant Trustee and professional persons retained by the Claimant Trust or Claimant Trustee in accordance with this Agreement.

(k) “Committee Member” means a Member who is/was also a member of the Creditors’ Committee.

(l) “Conflicted Member” has the meaning set forth in Section 4.6(c) hereof.

(m) “Contingent Trust Interests” means the contingent interests in the Claimant Trust to be distributed to Holders of Class A Limited Partnership Interests and Class B/C Limited Partnership Interests in accordance with the Plan.

(n) “Creditors’ Committee” means the Official Committee of Unsecured Creditors appointed pursuant to section 1102 of the Bankruptcy Code in the Chapter 11 Case, comprised of Acis, Meta-e Discovery, the Redeemer Committee and UBS.

(o) “Delaware Statutory Trust Act” means the Delaware Statutory Trust Act 12 Del C. §3801, et seq. as amended from time to time.

(p) “Delaware Trustee” has the meaning set forth in the introduction hereof.

(q) “Disability” means as a result of the Claimant Trustee’s or a Member’s incapacity due to physical or mental illness as determined by an accredited physician or psychologist, as applicable, selected by the Claimant Trustee or the Member, as applicable, the Claimant Trustee or such Member has been substantially unable to perform his or her duties hereunder for three (3) consecutive months or for an aggregate of 180 days during any period of twelve (12) consecutive months.

(r) “Disinterested Members” has the meaning set forth in Section 4.1 hereof.

(s) “Disputed Claims Reserve” means the reserve account to be opened by the Claimant Trust on or after the Effective Date and funded in an initial amount determined by the Claimant Trustee [(in a manner consistent with the Plan and with the consent of a simple majority of the Oversight Board)] to be sufficient to pay Disputed Claims under the Plan.

(t) “Employees” means the employees of the Debtor set forth in the Plan Supplement.

(u) “Employee Claims” means any General Unsecured Claim held by an Employee other than the Claims of the Senior Employees subject to stipulations (provided such stipulations are executed by any such Senior Employee of the Debtor prior to the Effective Date).

(v) “Estate Claims” has the meaning given to it in Exhibit A to the *Notice of Final Term Sheet* [Docket No. 354].

(w) “Equity Trust Interests” has the meaning given to it in Section 5.1(c) hereof.

(x) “Exchange Act” means the Securities Exchange Act of 1934, as amended.

(y) “General Unsecured Claim Trust Interests” means interests in the Claimant Trust to be distributed to Holders of Allowed Class 8 General Unsecured Claims (including Disputed General Unsecured Claims that are subsequently Allowed) in accordance with the Plan.

(z) “GUC Beneficiaries” means the Claimant Trust Beneficiaries who hold General Unsecured Claim Trust Interests.

(aa) “GUC Payment Certification” has the meaning given to it in Section 5.1(c) hereof.

(bb) “HarbourVest” means, collectively, HarbourVest 2017 Global Fund, L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment, L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners, L.P.

(cc) “Investment Advisers Act” means the Investment Advisers Act of 1940, as amended.

(dd) “Investment Company Act” means the Investment Company Act of 1940, as amended.

(ee) “Litigation Sub-Trust” means the sub-trust created pursuant to the Litigation Sub-Trust Agreement, which shall hold the Claimant Trust Assets that are Estate Claims and investigate, litigate, and/or settle the Estate Claims for the benefit of the Claimant Trust.

(ff) “Litigation Sub-Trust Agreement” means the litigation sub-trust agreement to be entered into by and between the Claimant Trustee and Litigation Trustee establishing and setting forth the terms and conditions of the Litigation Sub-Trust and governing the rights and responsibilities of the Litigation Trustee.

(gg) “Litigation Trustee” means Marc S. Kirschner, and any successor Litigation Trustee that may be appointed pursuant to the terms of the Litigation Sub-Trust Agreement, who shall be responsible for investigating, litigating, and settling the Estate Claims for the benefit of the Claimant Trust in accordance with the terms and conditions set forth in the Litigation Sub-Trust Agreement.

(hh) “Managed Funds” means Highland Multi-Strategy Credit Fund, L.P., Highland Restoration Capital Partners, L.P., and any other investment vehicle managed by the Debtor pursuant to an Executory Contract assumed pursuant to the Plan; *provided, however*, that the Highland Select Equity Fund, L.P. (and its direct and indirect subsidiaries) will not be considered a Managed Fund for purposes hereof.

(ii) “Material Claims” means the Claims asserted by UBS, Patrick Hagaman Daugherty, Integrated Financial Associates, Inc., and the Employees.

(jj) “Member” means a Person that is member of the Oversight Board.

(kk) “New GP LLC” means the general partner of the Reorganized Debtor.

(ll) “Oversight Board” means the board comprised of five (5) Members established pursuant to the Plan and Article III of this Agreement to oversee the Claimant Trustee’s performance of his duties and otherwise serve the functions set forth in this Agreement and those of the “Claimant Trust Oversight Committee” described in the Plan. Subject to the terms of this Agreement, the initial Members of the Oversight Board shall be: (i) Eric Felton, as representative of the Redeemer Committee; (ii) Josh Terry, as representative of Acis; (iii) Elizabeth Kozlowski, as representative of UBS; (iv) Paul McVoy, as representative of Meta-e Discovery; and (v) David Pauker.

(mm) “Plan” has the meaning set forth in the Recitals hereof.

(nn) “Privileges” means the Debtor’s rights, title and interests in and to any privilege or immunity attaching to any documents or communications (whether written or oral) associated with any of the Estate Claims or Employee Claims, including, without limitation, to,

attorney-client privilege and work-product privilege as defined in Rule 502(g) of the Federal Rules of Evidence; provided, however, that “Privileges” shall not include the work-product privilege of any non-Employee attorney or attorneys that has not been previously shared with the Debtor or any of its employees and the work-product privilege shall remain with the non-Employee attorney or attorneys who created such work product so long as it has not been previously shared with the Debtor or any of its employees, or otherwise waived.

(oo) “PSZJ” means Pachulski Stang Ziehl & Jones LLP.

(pp) “Redeemer Committee” means the Redeemer Committee of the Highland Crusader Fund.

(qq) “Registrar” has the meaning given to it in Section 5.3(a) hereof.

(rr) “Reorganized Debtor Assets” means any limited and general partnership interests held by the Debtor, the management of the Managed Funds and those Causes of Action (including, without limitation, claims for breach of fiduciary duty), that, for any reason, are not capable of being transferred to the Claimant Trust. For the avoidance of doubt, “Reorganized Debtor Assets” includes any partnership interests or shares of Managed Funds held by the Debtor but does not include the underlying portfolio assets held by the Managed Funds.

(ss) “Securities Act” means the Securities Act of 1933, as amended.

(tt) “Subordinated Beneficiaries” means the Claimant Trust Beneficiaries who hold Subordinated Claim Trust Interests.

(uu) “Subordinated Claim Trust Interests” means the subordinated interests in the Claimant Trust to be distributed to Holders of Allowed Class 9 Subordinated Claims in accordance with the Plan.

(vv) “TIA” means the Trust Indenture Act of 1939, as amended.

(ww) “Trust Interests” means collectively the General Unsecured Claim Trust Interests, Subordinated Claim Trust Interests, and Equity Trust Interests.

(xx) “Trust Register” has the meaning given to it in Section 5.4(b) hereof.

(yy) “Trustees” means collectively the Claimant Trustee and Delaware Trustee, however, it is expressly understood and agreed that the Delaware Trustee shall have none of the duties or liabilities of the Claimant Trustee.

(zz) “UBS” means collectively UBS Securities LLC and UBS AG London Branch.

(aaa) “WilmerHale” Wilmer Cutler Pickering Hale & Dorr LLP.

1.2 General Construction. As used in this Agreement, the masculine, feminine and neuter genders, and the plural and singular numbers shall be deemed to include the others in all

cases where they would apply. “Includes” and “including” are not limiting and “or” is not exclusive. References to “Articles,” “Sections” and other subdivisions, unless referring specifically to the Plan or provisions of the Bankruptcy Code, the Bankruptcy Rules, or other law, statute or regulation, refer to the corresponding Articles, Sections and other subdivisions of this Agreement, and the words “herein,” “hereafter” and words of similar import refer to this Agreement as a whole and not to any particular Article, Section, or subdivision of this Agreement. Amounts expressed in dollars or following the symbol “\$” shall be deemed to be in United States dollars. References to agreements or instruments shall be deemed to refer to such agreements or instruments as the same may be amended, supplemented, or otherwise modified in accordance with the terms thereof.

1.3 Incorporation of the Plan. The Plan is hereby incorporated into this Agreement and made a part hereof by this reference.

ARTICLE II.

ESTABLISHMENT OF THE CLAIMANT TRUST

2.1 Creation of Name of Trust.

(a) The Claimant Trust is hereby created as a statutory trust under the Delaware Statutory Trust Act and shall be called the “Highland Claimant Trust.” The Claimant Trustee shall be empowered to conduct all business and hold all property constituting the Claimant Trust Assets in such name in accordance with the terms and conditions set forth herein.

(b) The Trustees shall cause to be executed and filed in the office of the Secretary of State of the State of Delaware the Certificate of Trust and agree to execute, acting solely in their capacity as Trustees, such certificates as may from time to time be required under the Delaware Statutory Trust Act or any other Delaware law.

2.2 Objectives.

(a) The Claimant Trust is established for the purpose of satisfying Allowed General Unsecured Claims and Allowed Subordinated Claims (and only to the extent provided herein, Allowed Class A Limited Partnership Interests and Class B/C Limited Partnership Interests) under the Plan, by monetizing the Claimant Trust Assets transferred to it and making distributions to the Claimant Trust Beneficiaries. The Claimant Trust shall not continue or engage in any trade or business except to the extent reasonably necessary to monetize and distribute the Claimant Trust Assets consistent with this Agreement and the Plan and act as sole member and manager of New GP LLC. The Claimant Trust shall provide a mechanism for (i) the monetization of the Claimant Trust Assets and (ii) the distribution of the proceeds thereof, net of all claims, expenses, charges, liabilities, and obligations of the Claimant Trust, to the Claimant Trust Beneficiaries in accordance with the Plan. In furtherance of this distribution objective, the Claimant Trust will, from time to time, prosecute and resolve objections to certain Claims and Interests as provided herein and in the Plan.

(b) It is intended that the Claimant Trust be classified for federal income tax purposes as a “liquidating trust” within the meaning of section 301.7701-4(d) of the Treasury Regulations. In furtherance of this objective, the Claimant Trustee shall, in his business judgment,

make continuing best efforts to (i) dispose of or monetize the Claimant Trust Assets and resolve Claims, (ii) make timely distributions, and (iii) not unduly prolong the duration of the Claimant Trust, in each case in accordance with this Agreement.

2.3 Nature and Purposes of the Claimant Trust.

(a) The Claimant Trust is organized and established as a trust for the purpose of monetizing the Claimant Trust Assets and making distributions to Claimant Trust Beneficiaries in a manner consistent with “liquidating trust” status under Treasury Regulation Section 301.7701-4(d). The Claimant Trust shall retain all rights to commence and pursue all Causes of Action of the Debtor other than (i) Estate Claims, which shall be assigned to and commenced and pursued by the Litigation Trustee pursuant to the terms of the Litigation Sub-Trust Agreement, and (ii) Causes of Action constituting Reorganized Debtor Assets, if any, which shall be commenced and pursued by the Reorganized Debtor at the direction of the Claimant Trust as sole member of New GP LLC pursuant to the terms of the Reorganized Limited Partnership Agreement. The Claimant Trust and Claimant Trustee shall have and retain, and, as applicable, assign and transfer to the Litigation Sub-Trust and Litigation Trustee, any and all rights, defenses, cross-claims and counter-claims held by the Debtor with respect to any Claim as of the Petition Date. On and after the date hereof, in accordance with and subject to the Plan, the Claimant Trustee shall have the authority to (i) compromise, settle or otherwise resolve, or withdraw any objections to Claims against the Debtor, provided, however, the Claimant Trustee shall only have the authority to compromise or settle any Employee Claim with the unanimous consent of the Oversight Board and in the absence of unanimous consent, any such Employee Claim shall be transferred to the Litigation Sub-Trust and be litigated, comprised, settled, or otherwise resolved exclusively by the Litigation Trustee and (ii) compromise, settle, or otherwise resolve any Disputed Claims without approval of the Bankruptcy Court, which authority may be shared with or transferred to the Litigation Trustee in accordance with the terms of the Litigation Sub-Trust Agreement. For the avoidance of doubt, the Claimant Trust, pursuant to section 1123(b)(3)(B) of the Bankruptcy Code and applicable state trust law, is appointed as the successor-in-interest to, and representative of, the Debtor and its Estate for the retention, enforcement, settlement, and adjustment of all Claims other than Estate Claims, the Employee Claims, and those Claims constituting Reorganized Debtor Assets.

(b) The Claimant Trust shall be administered by the Claimant Trustee, in accordance with this Agreement, for the following purposes:

(i) to manage and monetize the Claimant Trust Assets in an expeditious but orderly manner with a view towards maximizing value within a reasonable time period;

(ii) to litigate and settle Claims in Class 8 and Class 9 (other than the Employee Claims, which shall be litigated and/or settled by the Litigation Trustee if the Oversight Board does not unanimously approve of any proposed settlement of such Employee Claim by the Claimant Trustee) and any of the Causes of Action included in the Claimant Trust Assets (including any cross-claims and counter-claims); provided, however, that Estate Claims transferred to the Litigation Sub-Trust shall be litigated and settled by the Litigation Trustee pursuant to the terms of the Litigation Sub-Trust Agreement;

(iii) to distribute net proceeds of the Claimant Trust Assets to the Claimant Trust Beneficiaries;

(iv) to distribute funds from the Disputed Claims Reserve to Holders of Trust Interests or to the Reorganized Debtor for distribution to Holders of Disputed Claims in each case in accordance with the Plan from time to time as any such Holder's Disputed Claim becomes an Allowed Claim under the Plan;

(v) to distribute funds to the Litigation Sub-Trust at the direction the Oversight Board;

(vi) to serve as the limited partner of, and to hold the limited partnership interests in, the Reorganized Debtor;

(vii) to serve as the sole member and manager of New GP LLC, the Reorganized Debtor's general partner;

(viii) to oversee the management and monetization of the Reorganized Debtor Assets pursuant to the terms of the Reorganized Limited Partnership Agreement, in its capacity as the sole member and manager of New GP LLC pursuant to the terms of the New GP LLC Documents, all with a view toward maximizing value in a reasonable time in a manner consistent with the Reorganized Debtor's fiduciary duties as investment adviser to the Managed Funds; and

(ix) to perform any other functions and take any other actions provided for or permitted by this Agreement and the Plan, and in any other agreement executed by the Claimant Trustee.

2.4 Transfer of Assets and Rights to the Claimant Trust; Litigation Sub-Trust.

(a) On the Effective Date, pursuant to the Plan, the Debtor shall irrevocably transfer, assign, and deliver, and shall be deemed to have transferred, assigned, and delivered, all Claimant Trust Assets and related Privileges held by the Debtor to the Claimant Trust free and clear of all Claims, Interests, Liens, and other encumbrances, and liabilities, except as provided in the Plan and this Agreement. To the extent certain assets comprising the Claimant Trust Assets, because of their nature or because such assets will accrue or become transferable subsequent to the Effective Date, and cannot be transferred to, vested in, and assumed by the Claimant Trust on such date, such assets shall be considered Reorganized Debtor Assets, which may be subsequently transferred to the Claimant Trust by the Reorganized Debtor consistent with the terms of the Reorganized Limited Partnership Agreement after such date.

(b) On or as soon as practicable after the Effective Date, the Claimant Trust shall irrevocably transfer, assign, and deliver, and shall be deemed to have transferred, assigned, and delivered, all Estate Claims and related Privileges held by the Claimant Trust to the Litigation Sub-Trust Trust free and clear of all Claims, Interests, Liens, and other encumbrances, and liabilities, except as provided in the Plan, this Agreement, and the Litigation Sub-Trust Agreement. Following the transfer of such Privileges, the Litigation Trustee shall have the power to waive the Privileges being so assigned and transferred.

(c) On or before the Effective Date, and continuing thereafter, the Debtor or Reorganized Debtor, as applicable, shall provide (i) for the Claimant Trustee's and Litigation Trustee's reasonable access to all records and information in the Debtor's and Reorganized Debtor's possession, custody or control, (ii) that all Privileges related to the Claimant Trust Assets shall transfer to and vest exclusively in the Claimant Trust (except for those Privileges that will be transferred and assigned to the Litigation Sub-Trust in respect of the Estate Claims), and (iii) subject to Section 3.12(c), the Debtor and Reorganized Debtor shall preserve all records and documents (including all electronic records or documents), including, but not limited to, the Debtor's file server, email server, email archiving system, master journal, SharePoint, Oracle E-Business Suite, Advent Geneva, Siepe database, Bloomberg chat data, and any backups of the foregoing, until such time as the Claimant Trustee, with the consent of the Oversight Board and, if pertaining to any of the Estate Claims, the Litigation Trustee, directs the Reorganized Debtor, as sole member of its general partner, that such records are no longer required to be preserved. For the purposes of transfer of documents, the Claimant Trust or Litigation Sub-Trust, as applicable, is an assignee and successor to the Debtor in respect of the Claimant Trust Assets and Estate Claims, respectively, and shall be treated as such in any review of confidentiality restrictions in requested documents.

(d) Until the Claimant Trust terminates pursuant to the terms hereof, legal title to the Claimant Trust Assets (other than Estate Claims) and all property contained therein shall be vested at all times in the Claimant Trust as a separate legal entity, except where applicable law in any jurisdiction requires title to any part of the Claimant Trust Assets to be vested in the Claimant Trustee, in which case title shall be deemed to be vested in the Claimant Trustee, solely in his capacity as Claimant Trustee. For purposes of such jurisdictions, the term Claimant Trust, as used herein, shall be read to mean the Claimant Trustee.

2.5 Principal Office. The principal office of the Claimant Trust shall be maintained by the Claimant Trustee at the following address: 100 Crescent Court, Suite 1850, Dallas, Texas 75201.

2.6 Acceptance. The Claimant Trustee accepts the Claimant Trust imposed by this Agreement and agrees to observe and perform that Claimant Trust, on and subject to the terms and conditions set forth herein and in the Plan.

2.7 Further Assurances. The Debtor, Reorganized Debtor, and any successors thereof will, upon reasonable request of the Claimant Trustee, execute, acknowledge and deliver such further instruments and do such further acts as may be necessary or proper to transfer to the Claimant Trustee any portion of the Claimant Trust Assets intended to be conveyed hereby and in the Plan in the form and manner provided for hereby and in the Plan and to vest in the Claimant Trustee the powers, instruments or funds in trust hereunder.

2.8 Incidents of Ownership. The Claimant Trust Beneficiaries shall be the sole beneficiaries of the Claimant Trust and the Claimant Trustee shall retain only such incidents of ownership as are necessary to undertake the actions and transactions authorized herein.

ARTICLE III. **THE TRUSTEES**

3.1 Role. In furtherance of and consistent with the purpose of the Claimant Trust, the Plan, and this Agreement, the Claimant Trustee, subject to the terms and conditions contained herein, in the Plan, and in the Confirmation Order, shall serve as Claimant Trustee with respect to the Claimant Trust Assets for the benefit of the Claimant Trust Beneficiaries and maintain, manage, and take action on behalf of the Claimant Trust.

3.2 Authority.

(a) In connection with the administration of the Claimant Trust, in addition to any and all of the powers enumerated elsewhere herein, the Claimant Trustee shall, in an expeditious but orderly manner, monetize the Claimant Trust Assets, make timely distributions and not unduly prolong the duration of the Claimant Trust. The Claimant Trustee shall have the power and authority and is authorized to perform any and all acts necessary and desirable to accomplish the purposes of this Agreement and the provisions of the Plan and the Confirmation Order relating to the Claimant Trust, within the bounds of this Agreement, the Plan, the Confirmation Order, and applicable law. The Claimant Trustee will monetize the Claimant Trust Assets with a view toward maximizing value in a reasonable time.

(b) The Claimant Trustee, subject to the limitations set forth in Section 3.3 of this Agreement shall have the right to prosecute, defend, compromise, adjust, arbitrate, abandon, estimate, or otherwise deal with and settle any and all Claims and Causes of Action that are part of the Claimant Trust Assets, other than the Estate Claims transferred to the Litigation Sub-Trust, as the Claimant Trustee determines is in the best interests of the Claimant Trust; provided, however, that if the Claimant Trustee proposes a settlement of an Employee Claim and does not obtain unanimous consent of the Oversight Board of such settlement, such Employee Claim shall be transferred to the Litigation Sub-Trust for the Litigation Trustee to litigate. To the extent that any action has been taken to prosecute, defend, compromise, adjust, arbitrate, abandon, or otherwise deal with and settle any such Claims and Causes of Action prior to the Effective Date, on the Effective Date the Claimant Trustee shall be substituted for the Debtor in connection therewith in accordance with Rule 25 of the Federal Rules of Civil Procedure, made applicable by Rule 7025 of the Federal Rules of Bankruptcy Procedure, and the caption with respect to such pending action shall be changed to the following “[Claimant Trustee], not individually but solely as Claimant Trustee for the Claimant Trust, et al. v. [Defendant]”.

(c) Subject in all cases to any limitations contained herein, in the Confirmation Order, or in the Plan, the Claimant Trustee shall have the power and authority to:

(i) solely as required by Section 2.4(d), hold legal title to any and all rights of the Claimant Trust and Beneficiaries in or arising from the Claimant Trust Assets, including collecting and receiving any and all money and other property belonging to the Claimant Trust and the right to vote or exercise any other right with respect to any claim or interest relating to the Claimant Trust Assets in any case under the Bankruptcy Code and receive any distribution with respect thereto;

(ii) open accounts for the Claimant Trust and make distributions of Claimant Trust Assets in accordance herewith;

(iii) as set forth in Section 3.11, exercise and perform the rights, powers, and duties held by the Debtor with respect to the Claimant Trust Assets (other than Estate Claims), including the authority under section 1123(b)(3) of the Bankruptcy Code, and shall be deemed to be acting as a representative of the Debtor's Estate with respect to the Claimant Trust Assets, including with respect to the sale, transfer, or other disposition of the Claimant Trust Assets;

(iv) settle or resolve any Claims in Class 8 and Class 9 other than the Material Claims and any Equity Interests;

(v) sell or otherwise monetize any publicly-traded asset for which there is a marketplace and any other assets (other than the Other Assets (as defined below)) valued less than or equal to \$3,000,000 (over a thirty-day period);

(vi) upon the direction of the Oversight Board, fund the Litigation Sub-Trust on the Effective Date and as necessary thereafter;

(vii) exercise and perform the rights, powers, and duties arising from the Claimant Trust's role as sole member of New GP LLC, and the role of New GP LLC, as general partner of the Reorganized Debtor, including the management of the Managed Funds;

(viii) protect and enforce the rights to the Claimant Trust Assets by any method deemed appropriate, including by judicial proceedings or pursuant to any applicable bankruptcy, insolvency, moratorium or similar law and general principles of equity;

(ix) obtain reasonable insurance coverage with respect to any liabilities and obligations of the Trustees, Litigation Trustee, and the Members of the Oversight Board solely in their capacities as such, in the form of fiduciary liability insurance, a directors and officers policy, an errors and omissions policy, or otherwise. The cost of any such insurance shall be a Claimant Trust Expense and paid by the Claimant Trustee from the Claimant Trust Assets;

(x) without further order of the Bankruptcy Court, but subject to the terms of this Agreement, employ various consultants, third-party service providers, and other professionals, including counsel, tax advisors, consultants, brokers, investment bankers, valuation counselors, and financial advisors, as the Claimant Trustee deems necessary to aid him in fulfilling his obligations under this Agreement; such consultants, third-party service providers, and other professionals shall be retained pursuant to whatever fee arrangement the Claimant Trustee deems appropriate, including contingency fee arrangements and any fees and expenses incurred by such professionals engaged by the Claimant Trustee shall be Claimant Trust Expenses and paid by the Claimant Trustee from the Claimant Trust Assets;

(xi) retain and approve compensation arrangements of an independent public accounting firm to perform such reviews and/or audits of the financial books and records of the Claimant Trust as may be required by this Agreement, the Plan, the Confirmation Order, and applicable laws and as may be reasonably and appropriate in Claimant Trustee's discretion. Subject to the foregoing, the Claimant Trustee may commit the Claimant Trust to, and shall pay,

such independent public accounting firm reasonable compensation for services rendered and reasonable and documented out-of-pocket expenses incurred, and all such compensation and reimbursement shall be paid by the Claimant Trustee from Claimant Trust Assets;

(xii) prepare and file (A) tax returns for the Claimant Trust treating the Claimant Trust as a grantor trust pursuant to Treasury Regulation section 1.671-4(a), (B) an election pursuant to Treasury Regulation 1.468B-9(c) to treat the Disputed Claims Reserve as a disputed ownership fund, in which case the Claimant Trustee will file federal income tax returns and pay taxes for the Disputed Claim Reserve as a separate taxable entity, or (C) any periodic or current reports that may be required under applicable law;

(xiii) prepare and send annually to the Beneficiaries, in accordance with the tax laws, a separate statement stating a Beneficiary's interest in the Claimant Trust and its share of the Claimant Trust's income, gain, loss, deduction or credit, and to instruct all such Beneficiaries to report such items on their federal tax returns;

(xiv) to the extent applicable, assert, enforce, release, or waive any attorney-client communication, attorney work product or other Privilege or defense on behalf of the Claimant Trust (including as to any Privilege that the Debtor held prior to the Effective Date), including to provide any information to insurance carriers that the Claimant Trustee deems necessary to utilize applicable insurance coverage for any Claim or Claims;

(xv) subject to Section 3.4, invest the proceeds of the Claimant Trust Assets and all income earned by the Claimant Trust, pending any distributions in short-term certificates of deposit, in banks or other savings institutions, or other temporary, liquid investments, such as Treasury bills;

(xvi) request any appropriate tax determination with respect to the Claimant Trust, including a determination pursuant to section 505 of the Bankruptcy Code;

(xvii) take or refrain from taking any and all actions the Claimant Trustee reasonably deems necessary for the continuation, protection, and maximization of the value of the Claimant Trust Assets consistent with purposes hereof;

(xviii) take all steps and execute all instruments and documents necessary to effectuate the purpose of the Claimant Trust and the activities contemplated herein and in the Confirmation Order and the Plan, and take all actions necessary to comply with the Confirmation Order, the Plan, and this Agreement and the obligations thereunder and hereunder;

(xix) exercise such other powers and authority as may be vested in or assumed by the Claimant Trustee by any Final Order;

(xx) evaluate and determine strategy with respect to the Claimant Trust Assets, and hold, pursue, prosecute, adjust, arbitrate, compromise, release, settle or abandon the Claimant Trust Assets on behalf of the Claimant Trust; and

(xxi) with respect to the Claimant Trust Beneficiaries, perform all duties and functions of the Distribution Agent as set forth in the Plan, including distributing Cash from

the Disputed Claims Reserve, solely on account of Disputed Class 1 through Class 7 Claims that were Disputed as of the Effective Date, but become Allowed, to the Reorganization Debtor such that the Reorganized Debtor can satisfy its duties and functions as Distribution Agent with respect to Claims in Class 1 through Class 7 (the foregoing subparagraphs (i)-(xxi) being collectively, the “Authorized Acts”).

(d) The Claimant Trustee and the Oversight Committee will enter into an agreement as soon as practicable after the Effective Date concerning the Claimant Trustee’s authority with respect to certain other assets, including certain portfolio company assets (the “Other Assets”).

(e) The Claimant Trustee has the power and authority to act as trustee of the Claimant Trust and perform the Authorized Acts through the date such Claimant Trustee resigns, is removed, or is otherwise unable to serve for any reason.

3.3 Limitation of Authority.

(a) Notwithstanding anything herein to the contrary, the Claimant Trust and the Claimant Trustee shall not (i) be authorized to engage in any trade or business, (ii) take any actions inconsistent with the management of the Claimant Trust Assets as are required or contemplated by applicable law, the Confirmation Order, the Plan, and this Agreement, (iii) take any action in contravention of the Confirmation Order, the Plan, or this Agreement, or (iv) cause New GP LLC to cause the Reorganized Debtor to take any action in contravention of the Plan, Plan Documents or the Confirmation Order.

(b) Notwithstanding anything herein to the contrary, and in no way limiting the terms of the Plan, the Claimant Trustee must receive the consent by vote of a simple majority of the Oversight Board pursuant to the notice and quorum requirements set forth in Section 4.5 herein, in order to:

- (i) terminate or extend the term of the Claimant Trust;
- (ii) prosecute, litigate, settle or otherwise resolve any of the Material Claims;
- (iii) except otherwise set forth herein, sell or otherwise monetize any assets that are not Other Assets, including Reorganized Debtor Assets (other than with respect to the Managed Funds), that are valued greater than \$3,000,000 (over a thirty-day period);
- (iv) except for cash distributions made in accordance with the terms of this Agreement, make any cash distributions to Claimant Trust Beneficiaries in accordance with Article IV of the Plan;
- (v) except for any distributions made in accordance with the terms of this Agreement, make any distributions from the Disputed Claims Reserve to Holders of Disputed Claims after such time that such Holder’s Claim becomes an Allowed Claim under the Plan;

(vi) reserve or retain any cash or cash equivalents in an amount reasonably necessary to meet claims and contingent liabilities (including Disputed Claims and any indemnification obligations that may arise under Section 8.2 of this Agreement), to maintain the value of the Claimant Trust Assets, or to fund ongoing operations and administration of the Litigation Sub-Trust;

(vii) borrow as may be necessary to fund activities of the Claimant Trust;

(viii) determine whether the conditions under Section 5.1(c) of this Agreement have been satisfied such that a certification should be filed with the Bankruptcy Court;

(ix) invest the Claimant Trust Assets, proceeds thereof, or any income earned by the Claimant Trust (for the avoidance of doubt, this shall not apply to investment decisions made by the Reorganized Debtor or its subsidiaries solely with respect to Managed Funds);

(x) change the compensation of the Claimant Trustee;

(xi) subject to ARTICLE X, make structural changes to the Claimant Trust or take other actions to minimize any tax on the Claimant Trust Assets; and

(xii) retain counsel, experts, advisors, or any other professionals; provided, however, the Claimant Trustee shall not be required to obtain the consent of the Oversight Board for the retention of (i) PSZJ, WilmerHale, or Development Specialists, Inc. and (ii) any other professional whose expected fees and expenses are estimated at less than or equal to \$200,000.

(c) [Reserved.]

3.4 Investment of Cash. The right and power of the Claimant Trustee to invest the Claimant Trust Assets, the proceeds thereof, or any income earned by the Claimant Trust, with majority approval of the Oversight Board, shall be limited to the right and power to invest in such Claimant Trust Assets only in Cash and U.S. Government securities as defined in section 29(a)(16) of the Investment Company Act; provided, however that (a) the scope of any such permissible investments shall be further limited to include only those investments that a “liquidating trust” within the meaning of Treasury Regulation Section 301.7701-4(d), may be permitted to hold, pursuant to the Treasury Regulations, or any modification in the Internal Revenue Service (“IRS”) guidelines, whether set forth in IRS rulings, other IRS pronouncements, or otherwise, (b) the Claimant Trustee may retain any Claimant Trust Assets received that are not Cash only for so long as may be required for the prompt and orderly monetization or other disposition of such assets, and (c) the Claimant Trustee may expend the assets of the Claimant Trust (i) as reasonably necessary to meet contingent liabilities (including indemnification and similar obligations) and maintain the value of the assets of the Claimant Trust during the pendency of this Claimant Trust, (ii) to pay Claimant Trust Expenses (including, but not limited to, any taxes imposed on the Claimant Trust and reasonable attorneys’ fees and expenses in connection with litigation), and (iii) to satisfy other liabilities incurred or assumed by the Claimant Trust (or to which the assets are otherwise subject) in accordance with the Plan or this Agreement).

3.5 Binding Nature of Actions. All actions taken and determinations made by the Claimant Trustee in accordance with the provisions of this Agreement shall be final and binding upon any and all Beneficiaries.

3.6 Term of Service. The Claimant Trustee shall serve as the Claimant Trustee for the duration of the Claimant Trust, subject to death, resignation or removal.

3.7 Resignation. The Claimant Trustee may resign as Claimant Trustee of the Claimant Trust by an instrument in writing delivered to the Bankruptcy Court and Oversight Board at least thirty (30) days before the proposed effective date of resignation. The Claimant Trustee shall continue to serve as Claimant Trustee after delivery of the Claimant Trustee's resignation until the proposed effective date of such resignation, unless the Claimant Trustee and a simple majority of the Oversight Board consent to an earlier effective date, which earlier effective date shall be no earlier than the date of appointment of a successor Claimant Trustee in accordance with Section 3.9 hereof becomes effective.

3.8 Removal.

(a) The Claimant Trustee may be removed by a simple majority vote of the Oversight Board for Cause immediately upon notice thereof, or without Cause upon 60 days' prior written notice. Upon the removal of the Claimant Trustee pursuant hereto, the Claimant Trustee will resign, or be deemed to have resigned, from any role or position he or she may have at New GP LLC or the Reorganized Debtor effective upon the expiration of the foregoing 60 day period unless the Claimant Trustee and a simple majority of the Oversight Board agree otherwise.

(b) To the extent there is any dispute regarding the removal of a Claimant Trustee (including any dispute relating to any compensation or expense reimbursement due under this Agreement) the Bankruptcy Court shall retain jurisdiction to consider and adjudicate such dispute. Notwithstanding the foregoing, the Claimant Trustee will continue to serve as the Claimant Trustee after his removal until the earlier of (i) the time when a successor Claimant Trustee will become effective in accordance with Section 3.9 of this Agreement or (ii) such date as the Bankruptcy Court otherwise orders.

3.9 Appointment of Successor.

(a) Appointment of Successor. In the event of a vacancy by reason of the death or Disability (in the case of a Claimant Trustee that is a natural person), dissolution (in the case of a Claimant Trustee that is not a natural person), or removal of the Claimant Trustee, or prospective vacancy by reason of resignation, a successor Claimant Trustee shall be selected by a simple majority vote of the Oversight Board. If Members of the Oversight Board are unable to secure a majority vote, the Bankruptcy Court will determine the successor Claimant Trustee on motion of the Members. If a final decree has been entered closing the Chapter 11 Case, the Claimant Trustee may seek to reopen the Chapter 11 Case for the limited purpose of determining the successor Claimant Trustee, and the costs for such motion and costs related to re-opening the Chapter 11 Case shall be paid by the Claimant Trust. The successor Claimant Trustee shall be appointed as soon as practicable, but in any event no later than sixty (60) days after the occurrence of the

vacancy or, in the case of resignation, on the effective date of the resignation of the then acting Claimant Trustee.

(b) Vesting or Rights in Successor Claimant Trustee. Every successor Claimant Trustee appointed hereunder shall execute, acknowledge, and deliver to the Claimant Trust, the exiting Claimant Trustee, the Oversight Board, and file with the Bankruptcy Court, an instrument accepting such appointment subject to the terms and provisions hereof. The successor Claimant Trustee, without any further act, deed, or conveyance shall become vested with all the rights, powers, trusts and duties of the exiting Claimant Trustee, except that the successor Claimant Trustee shall not be liable for the acts or omissions of the retiring Claimant Trustee. In no event shall the retiring Claimant Trustee be liable for the acts or omissions of the successor Claimant Trustee.

(c) Interim Claimant Trustee. During any period in which there is a vacancy in the position of Claimant Trustee, the Oversight Board shall appoint one of its Members to serve as the interim Claimant Trustee (the “Interim Trustee”) until a successor Claimant Trustee is appointed pursuant to Section 3.9(a). The Interim Trustee shall be subject to all the terms and conditions applicable to a Claimant Trustee hereunder. Such Interim Trustee shall not be limited in any manner from exercising any rights or powers as a Member of the Oversight Board merely by such Person’s appointment as Interim Trustee.

3.10 Continuance of Claimant Trust. The death, resignation, or removal of the Claimant Trustee shall not operate to terminate the Claimant Trust created by this Agreement or to revoke any existing agency (other than any agency of the Claimant Trustee as the Claimant Trustee) created pursuant to the terms of this Agreement or invalidate any action taken by the Claimant Trustee. In the event of the resignation or removal of the Claimant Trustee, the Claimant Trustee shall promptly (i) execute and deliver, by the effective date of resignation or removal, such documents, instruments, records, and other writings as may be reasonably requested by his successor to effect termination of the exiting Claimant Trustee’s capacity under this Agreement and the conveyance of the Claimant Trust Assets then held by the exiting Claimant Trustee to the successor Claimant Trustee; (ii) deliver to the successor Claimant Trustee all non-privileged documents, instruments, records, and other writings relating to the Claimant Trust as may be in the possession or under the control of the exiting Claimant Trustee, provided, the exiting Claimant Trustee shall have the right to make and retain copies of such documents, instruments, records and other writings delivered to the successor Claimant Trustee and the cost of making such copies shall be a Claimant Trust Expense to be paid by the Claimant Trust; and (iii) otherwise assist and cooperate in effecting the assumption of the exiting Claimant Trustee’s obligations and functions by his successor, provided the fees and expenses of such assistance and cooperation shall be paid to the exiting Claimant Trustee by the Claimant Trust. The exiting Claimant Trustee shall irrevocably appoint the successor Claimant Trustee as his attorney-in-fact and agent with full power of substitution for it and its name, place and stead to do any and all acts that such exiting Claimant Trustee is obligated to perform under this Section 3.10.

3.11 Claimant Trustee as “Estate Representative”. The Claimant Trustee will be the exclusive trustee of the Claimant Trust Assets for purposes of 31 U.S.C. § 3713(b) and 26 U.S.C. § 6012(b)(3), as well as the representative of the Estate appointed pursuant to section 1123(b)(3)(B) of the Bankruptcy Code (the “Estate Representative”) with respect to the Claimant

Trust Assets, with all rights and powers attendant thereto, in addition to all rights and powers granted in the Plan and in this Agreement; provided that all rights and powers as representative of the Estate pursuant to section 1123(b)(3)(B) shall be transferred to the Litigation Trustee in respect of the Estate Claims and the Employee Claims. The Claimant Trustee will be the successor-in-interest to the Debtor with respect to any action pertaining to the Claimant Trust Assets, which was or could have been commenced by the Debtor prior to the Effective Date, except as otherwise provided in the Plan or Confirmation Order. All actions, claims, rights or interest constituting Claimant Trust Assets are preserved and retained and may be enforced, or assignable to the Litigation Sub-Trust, by the Claimant Trustee as an Estate Representative.

3.12 Books and Records.

(a) The Claimant Trustee shall maintain in respect of the Claimant Trust and the Claimant Trust Beneficiaries books and records reflecting Claimant Trust Assets in its possession and the income of the Claimant Trust and payment of expenses, liabilities, and claims against or assumed by the Claimant Trust in such detail and for such period of time as may be necessary to enable it to make full and proper accounting in respect thereof. Such books and records shall be maintained as reasonably necessary to facilitate compliance with the tax reporting requirements of the Claimant Trust and the requirements of Article VII herein. Except as otherwise provided herein, nothing in this Agreement requires the Claimant Trustee to file any accounting or seek approval of any court with respect to the administration of the Claimant Trust, or as a condition for managing any payment or distribution out of the Claimant Trust Assets.

(b) The Claimant Trustee shall provide quarterly reporting to the Oversight Board and Claimant Trust Beneficiaries of (i) the status of the Claimant Trust Assets, (ii) the balance of Cash held by the Claimant Trust (including in each of the Claimant Trust Expense Reserve and Disputed Claim Reserve), (iii) the determination and any re-determination, as applicable, of the total amount allocated to the Disputed Claim Reserve, (iv) the status of Disputed Claims and any resolutions thereof, (v) the status of any litigation, including the pursuit of the Causes of Action, (vi) the Reorganized Debtor's performance, and (vii) operating expenses; provided, however, that the Claimant Trustee may, with respect to any Member of the Oversight Board or Claimant Trust Beneficiary, redact any portion of such reports that relate to such Entity's Claim or Equity Interest, as applicable and any reporting provided to Claimant Trust Beneficiaries may be subject to such Claimant Trust Beneficiary's agreement to maintain confidentiality with respect to any non-public information.

(c) The Claimant Trustee may dispose some or all of the books and records maintained by the Claimant Trustee at the later of (i) such time as the Claimant Trustee determines, with the unanimous consent of the Oversight Board, that the continued possession or maintenance of such books and records is no longer necessary for the benefit of the Claimant Trust, or (ii) upon the termination and winding up of the Claimant Trust under Article IX of this Agreement; provided, however, the Claimant Trustee shall not dispose of any books and records related to the Estate Claims or Employee Claims without the consent of the Litigation Trustee. Notwithstanding the foregoing, the Claimant Trustee shall cause the Reorganized Debtor and its subsidiaries to retain such books and records, and for such periods, as are required to be retained pursuant to Section 204-2 of the Investment Advisers Act or any other applicable laws, rules, or regulations.

3.13 Compensation and Reimbursement; Engagement of Professionals.

(a) Compensation and Expenses.

(i) Compensation. As compensation for any services rendered by the Claimant Trustee in connection with this Agreement, the Claimant Trustee shall receive compensation of \$150,000 per month (the “Base Salary”). Within the first forty-five days following the Confirmation Date, the Claimant Trustee, on the one hand, and the Committee, if prior to the Effective Date, or the Oversight Board, if on or after the Effective Date, on the other, will negotiate go-forward compensation for the Claimant Trustee which will include (a) the Base Salary, (b) a success fee, and (c) severance.

(ii) Expense Reimbursements. All reasonable out-of-pocket expenses of the Claimant Trustee in the performance of his or her duties hereunder, shall be reimbursed as Claimant Trust Expenses paid by the Claimant Trust.

(b) Professionals.

(i) Engagement of Professionals. The Claimant Trustee shall engage professionals from time to time in conjunction with the services provided hereunder. The Claimant Trustee’s engagement of such professionals shall be approved by a majority of the Oversight Board as set forth in Section 3.3(b) hereof.

(ii) Fees and Expenses of Professionals. The Claimant Trustee shall pay the reasonable fees and expenses of any retained professionals as Claimant Trust Expenses.

3.14 Reliance by Claimant Trustee. Except as otherwise provided herein, the Claimant Trustee may rely, and shall be fully protected in acting or refraining from acting, on any resolution, statement, certificate, instrument, opinion, report, notice, request, consent, order or other instrument or document that the Claimant Trustee has no reason to believe to be other than genuine and to have been signed or presented by the proper party or parties or, in the case of facsimiles, to have been sent by the proper party or parties, and the Claimant Trustee may conclusively rely as to the truth of the statements and correctness of the opinions or direction expressed therein. The Claimant Trustee may consult with counsel and other professionals, and any advice of such counsel or other professionals shall constitute full and complete authorization and protection in respect of any action taken or not taken by the Claimant Trustee in accordance therewith. The Claimant Trustee shall have the right at any time to seek instructions from the Bankruptcy Court, or any other court of competent jurisdiction concerning the Claimant Trust Assets, this Agreement, the Plan, or any other document executed in connection therewith, and any such instructions given shall be full and complete authorization in respect of any action taken or not taken by the Claimant Trustee in accordance therewith. The Claimant Trust shall have the right to seek Orders from the Bankruptcy Court as set forth in Article IX of the Plan.

3.15 Commingling of Claimant Trust Assets. The Claimant Trustee shall not commingle any of the Claimant Trust Assets with his or her own property or the property of any other Person.

3.16 Delaware Trustee.

(a) The Delaware Trustee shall have the limited power and authority, and is hereby authorized and empowered, to (i) accept legal process served on the Claimant Trust in the State of Delaware; and (ii) execute any certificates that are required to be executed under the Delaware Statutory Trust Act and file such certificates in the office of the Secretary of State of the State of Delaware, and take such action or refrain from taking such action under this Agreement, in either case as may be directed in a writing delivered to the Delaware Trustee by the Claimant Trustee and upon which the Delaware Trustee shall be entitled to conclusively and exclusively rely; provided, however, that the Delaware Trustee shall not be required to take or to refrain from taking any such action if the Delaware Trustee shall believe, or shall have been advised by counsel, that such performance is likely to involve the Delaware Trustee in personal liability or to result in personal liability to the Delaware Trustee, or is contrary to the terms of this Agreement or of any document contemplated hereby to which the Claimant Trust or the Delaware Trustee is or becomes a party or is otherwise contrary to law. The Parties agree not to instruct the Delaware Trustee to take any action or to refrain from taking any action that is contrary to the terms of this Agreement or of any document contemplated hereby to which the Claimant Trust or the Delaware Trustee is or becomes party or that is otherwise contrary to law. Other than as expressly provided for in this Agreement, the Delaware Trustee shall have no duty or power to take any action for or on behalf of the Claimant Trust. For the avoidance of doubt, the Delaware Trustee will only have such rights and obligations as expressly provided by reference to the Delaware Trustee hereunder. The Delaware Trustee shall not be entitled to exercise any powers, nor shall the Delaware Trustee have any of the duties and responsibilities, of the Claimant Trustee set forth herein. The Delaware Trustee shall be one of the trustees of the Claimant Trust for the sole and limited purpose of fulfilling the requirements of Section 3807 of the Delaware Statutory Trust Act and for taking such actions as are required to be taken by a Delaware Trustee under the Delaware Statutory Trust Act. The duties (including fiduciary duties), liabilities and obligations of the Delaware Trustee shall be limited to those expressly set forth in this Section 3.16 and there shall be no other duties (including fiduciary duties) or obligations, express or implied, at law or in equity, of the Delaware Trustee. To the extent that, at law or in equity, the Delaware Trustee has duties (including fiduciary duties) and liabilities relating thereto to the Claimant Trust, the other parties hereto or any beneficiary of the Claimant Trust, it is hereby understood and agreed by the other parties hereto that such duties and liabilities are replaced by the duties and liabilities of the Delaware Trustee expressly set forth in this Agreement.

(b) The Delaware Trustee shall serve until such time as the Claimant Trustee removes the Delaware Trustee or the Delaware Trustee resigns and a successor Delaware Trustee is appointed by the Claimant Trustee in accordance with the terms hereof. The Delaware Trustee may resign at any time upon the giving of at least thirty (30) days' advance written notice to the Claimant Trustee; provided, that such resignation shall not become effective unless and until a successor Delaware Trustee shall have been appointed by the Claimant Trustee in accordance with the terms hereof. If the Claimant Trustee does not act within such thirty (30) day period, the Delaware Trustee may apply to the Court of Chancery of the State of Delaware for the appointment of a successor Delaware Trustee.

(c) Upon the resignation or removal of the Delaware Trustee, the Claimant Trustee shall appoint a successor Delaware Trustee by delivering a written instrument to the

outgoing Delaware Trustee. Any successor Delaware Trustee must satisfy the requirements of Section 3807 of the Delaware Statutory Trust Act. Any resignation or removal of the Delaware Trustee and appointment of a successor Delaware Trustee shall not become effective until a written acceptance of appointment is delivered by the successor Delaware Trustee to the outgoing Delaware Trustee and the Claimant Trustee and any undisputed fees, expenses and indemnity due to the outgoing Delaware Trustee are paid. Following compliance with the preceding sentence, the successor Delaware Trustee shall become fully vested with all of the rights, powers, duties and obligations of the outgoing Delaware Trustee under this Agreement, with like effect as if originally named as Delaware Trustee, and the outgoing Delaware Trustee shall be discharged of its duties and obligations under this Agreement.

(d) The Delaware Trustee shall be paid such compensation as agreed to pursuant to a separate fee agreement. The Claimant Trust shall promptly advance and reimburse the Delaware Trustee for all reasonable out-of-pocket costs and expenses (including reasonable legal fees and expenses) incurred by the Delaware Trustee in connection with the performance of its duties hereunder.

(e) WTNA shall not be responsible or liable for any failure or delay in the performance of its obligations under this Agreement arising out of or caused, directly or indirectly, by circumstances beyond its control, including without limitation, any act or provision of any present or future law or regulation or governmental authority; acts of God; earthquakes; fires; floods; wars; terrorism; civil or military disturbances; sabotage; epidemics; riots; interruptions, loss or malfunctions of utilities, computer (hardware or software) or communications service; accidents; labor disputes; acts of civil or military authority or governmental actions; or the unavailability of the Federal Reserve Bank wire or telex or other wire or communication facility.

(f) Any corporation or association into which WTNA may be converted or merged, or with which it may be consolidated, or to which it may sell or transfer all or substantially all of its corporate trust business and assets as a whole or substantially as a whole, or any corporation or association resulting from any such conversion, sale, merger, consolidation or transfer to which the Delaware Trustee is a party, will be and become the successor Delaware Trustee under this Agreement and will have and succeed to the rights, powers, duties, immunities and privileges as its predecessor, without the execution or filing of any instrument or paper or the performance of any further act.

ARTICLE IV. **THE OVERSIGHT BOARD**

4.1 Oversight Board Members. The Oversight Board will be comprised of five (5) Members appointed to serve as the board of managers of the Claimant Trust, at least two (2) of which shall be disinterested Members selected by the Creditors' Committee (such disinterested members, the "Disinterested Members"). The initial Members of the Oversight Board will be representatives of Acis, the Redeemer Committee, Meta-e Discovery, UBS, and David Pauker. David Pauker and Paul McVoy, the representative of Meta-e Discovery, shall serve as the initial Disinterested Board Members; provided, however, that if the Plan is confirmed with the Convenience Class or any other convenience class supported by the Creditors' Committee, Meta-

E Discovery and its representative will resign on the Effective Date or as soon as practicable thereafter and be replaced in accordance with Section 4.10 hereof..

4.2 Authority and Responsibilities.

(a) The Oversight Board shall, as and when requested by either of the Claimant Trustee and Litigation Trustee, or when the Members otherwise deem it to be appropriate or as is otherwise required under the Plan, the Confirmation Order, or this Agreement, consult with and advise the Claimant Trustee and Litigation Trustee as to the administration and management of the Claimant Trust and the Litigation Sub-Trust, as applicable, in accordance with the Plan, the Confirmation Order, this Agreement, and Litigation Sub-Trust Agreement (as applicable) and shall have the other responsibilities and powers as set forth herein. As set forth in the Plan, the Confirmation Order, and herein, the Oversight Board shall have the authority and responsibility to oversee, review, and govern the activities of the Claimant Trust, including the Litigation Sub-Trust, and the performance of the Claimant Trustee and Litigation Trustee, and shall have the authority to remove the Claimant Trustee in accordance with Section 3.8 hereof or the Litigation Trustee in accordance with the terms of the Litigation Sub-Trust Agreement; provided, however, that the Oversight Board may not direct either Claimant Trustee and Litigation Trustee to act inconsistently with their respective duties under this Agreement (including without limitation as set in Section 4.2(e) below), the Litigation Sub-Trust Agreement, the Plan, the Confirmation Order, or applicable law.

(b) The Oversight Board shall also (i) monitor and oversee the administration of the Claimant Trust and the Claimant Trustee's performance of his or her responsibilities under this Agreement, (ii) as more fully set forth in the Litigation Sub-Trust Agreement, approve funding to the Litigation Sub-Trust, monitor and oversee the administration of the Litigation Sub-Trust and the Litigation Trustee's performance of his responsibilities under the Litigation Sub-Trust Agreement, and (iii) perform such other tasks as are set forth herein, in the Litigation Sub-Trust Agreement, and in the Plan.

(c) The Claimant Trustee shall consult with and provide information to the Oversight Board in accordance with and pursuant to the terms of the Plan, the Confirmation Order, and this Agreement to enable the Oversight Board to meet its obligations hereunder.

(d) Notwithstanding any provision of this Agreement to the contrary, the Claimant Trustee shall not be required to (i) obtain the approval of any action by the Oversight Board to the extent that the Claimant Trustee, in good faith, reasonably determines, based on the advice of legal counsel, that such action is required to be taken by applicable law, the Plan, the Confirmation Order, or this Agreement or (ii) follow the directions of the Oversight Board to take any action the extent that the Claimant Trustee, in good faith, reasonably determines, based on the advice of legal counsel, that such action is prohibited by applicable law the Plan, the Confirmation Order, or this Agreement.

(e) Notwithstanding provision of this Agreement to the contrary, with respect to the activities of the Reorganized Debtor in its capacity as an investment adviser (and subsidiaries of the Reorganized Debtor that serve as general partner or in an equivalent capacity) to any Managed Funds, the Oversight Board shall not make investment decisions or otherwise participate

in the investment decision making process relating to any such Managed Funds, nor shall the Oversight Board or any member thereof serve as a fiduciary to any such Managed Funds. It is agreed and understood that investment decisions made by the Reorganized Debtor (or its subsidiary entities) with respect to Managed Funds shall be made by the Claimant Trustee in his capacity as an officer of the Reorganized Debtor and New GP LLC and/or such persons who serve as investment personnel of the Reorganized Debtor from time to time, and shall be subject to the fiduciary duties applicable to such entities and persons as investment adviser to such Managed Funds.

4.3 Fiduciary Duties. The Oversight Board (and each Member in its capacity as such) shall have fiduciary duties to the Claimant Trust Beneficiaries consistent with the fiduciary duties that the members of the Creditors' Committee have to unsecured creditors and shall exercise its responsibilities accordingly; provided, however, that the Oversight Board shall not owe fiduciary obligations to any Holders of Class A Limited Partnership Interests or Class B/C Limited Partnership Interests until such Holders become Claimant Trust Beneficiaries in accordance with Section 5.1(c) hereof; provided, further, that the Oversight Board shall not owe fiduciary obligations to a Holder of an Equity Trust Interest if such Holder is named as a defendant in any of the Causes of Action, including Estate Claims, in their capacities as such, it being the intent that the Oversight Board's fiduciary duties are to maximize the value of the Claimant Trust Assets, including the Causes of Action. In all circumstances, the Oversight Board shall act in the best interests of the Claimant Trust Beneficiaries and in furtherance of the purpose of the Claimant Trust. Notwithstanding anything to the contrary contained in this Agreement, the foregoing shall not eliminate the implied contractual covenant of good faith and fair dealing.

4.4 Meetings of the Oversight Board. Meetings of the Oversight Board are to be held as necessary to ensure the operation of the Claimant Trust but in no event less often than quarterly. Special meetings of the Oversight Board may be held whenever and wherever called for by the Claimant Trustee or any Member; provided, however, that notice of any such meeting shall be duly given in writing no less than 48 hours prior to such meeting (such notice requirement being subject to any waiver by the Members in the minutes, if any, or other transcript, if any, of proceedings of the Oversight Board). Unless the Oversight Board decides otherwise (which decision shall rest in the reasonable discretion of the Oversight Board), the Claimant Trustee, and each of the Claimant Trustee's designated advisors may, but are not required to, attend meetings of the Oversight Board.

4.5 Unanimous Written Consent. Any action required or permitted to be taken by the Oversight Board in a meeting may be taken without a meeting if the action is taken by unanimous written consents describing the actions taken, signed by all Members and recorded. If any Member informs the Claimant Trustee (via e-mail or otherwise) that he or she objects to the decision, determination, action, or inaction proposed to be made by unanimous written consent, the Claimant Trustee must use reasonable good faith efforts to schedule a meeting on the issue to be set within 48 hours of the request or as soon thereafter as possible on which all members of the Oversight Board are available in person or by telephone. Such decision, determination, action, or inaction must then be made pursuant to the meeting protocols set forth herein.

4.6 Manner of Acting.

(a) A quorum for the transaction of business at any meeting of the Oversight Board shall consist of at least three Members (including no less than one (1) Disinterested Member); provided that if the transaction of business at a meeting would constitute a direct or indirect conflict of interest for the Redeemer Committee, Acis, and/or UBS, at least two Disinterested Members must be present for there to be a quorum. Except as set otherwise forth herein, the majority vote of the Members present at a duly called meeting at which a quorum is present throughout shall be the act of the Oversight Board except as otherwise required by law or as provided in this Agreement. Any or all of the Members may participate in a regular or special meeting by, or conduct the meeting through the use of, conference telephone, video conference, or similar communications equipment by means of which all Persons participating in the meeting may hear each other, in which case any required notice of such meeting may generally describe the arrangements (rather than or in addition of the place) for the holding hereof. Any Member participating in a meeting by this means is deemed to be present in person at the meeting. Voting (including on negative notice) may be conducted by electronic mail or individual communications by the applicable Trustee and each Member.

(b) Any Member who is present and entitled to vote at a meeting of the Oversight Board when action is taken is deemed to have assented to the action taken, subject to the requisite vote of the Oversight Board, unless (i) such Member objects at the beginning of the meeting (or promptly upon his/her arrival) to holding or transacting business at the meeting; (ii) his/her dissent or abstention from the action taken is entered in the minutes of the meeting; or (iii) he/she delivers written notice (including by electronic or facsimile transmission) of his/her dissent or abstention to the Oversight Board before its adjournment. The right of dissent or abstention is not available to any Member of the Oversight Board who votes in favor of the action taken.

(c) Prior to a vote on any matter or issue or the taking of any action with respect to any matter or issue, each Member shall report to the Oversight Board any conflict of interest such Member has or may have with respect to the matter or issue at hand and fully disclose the nature of such conflict or potential conflict (including, without limitation, disclosing any and all financial or other pecuniary interests that such Member may have with respect to or in connection with such matter or issue, other than solely as a holder of Trust Interests). A Member who, with respect to a matter or issue, has or who may have a conflict of interest whereby such Member's interests are adverse to the interests of the Claimant Trust shall be deemed a "Conflicted Member" who shall not be entitled to vote or take part in any action with respect to such matter or issue. In the event of a Conflicted Member, the vote or action with respect to such matter or issue giving rise to such conflict shall be undertaken only by Members who are not Conflicted Members and, notwithstanding anything contained herein to the contrary, the affirmative vote of only a majority of the Members who are not Conflicted Members shall be required to approve of such matter or issue and the same shall be the act of the Oversight Board.

(d) Each of Acis, the Redeemer Committee, and UBS shall be deemed "Conflicted Members" with respect to any matter or issue related to or otherwise affecting any of their respective Claim(s) (a "Committee Member Claim Matter"). A unanimous vote of the Disinterested Members shall be required to approve of or otherwise take action with respect to any

Committee Member Claim Matter and, notwithstanding anything herein to the contrary, the same shall be the act of the Oversight Board.

4.7 Tenure of the Members of the Oversight Board. The authority of the Members of the Oversight Board will be effective as of the Effective Date and will remain and continue in full force and effect until the Claimant Trust is terminated in accordance with Article IX hereof. The Members of the Oversight Board will serve until such Member's successor is duly appointed or until such Member's earlier death or resignation pursuant to Section 4.8 below, or removal pursuant to Section 4.9 below.

4.8 Resignation. A Member of the Oversight Board may resign by giving prior written notice thereof to the Claimant Trustee and other Members. Such resignation shall become effective on the earlier to occur of (i) the day that is 90 days following the delivery of such notice, (ii) the appointment of a successor in accordance with Section 4.10 below, and (iii) such other date as may be agreed to by the Claimant Trustee and the non-resigning Members of the Oversight Board.

4.9 Removal. A majority of the Oversight Board may remove any Member for Cause or Disability. If any Committee Member has its Claim disallowed in its entirety the representative of such entity will immediately be removed as a Member without the requirement for a vote and a successor will be appointed in the manner set forth herein. Notwithstanding the foregoing, upon the termination of the Claimant Trust, any or all of the Members shall be deemed to have resigned.

4.10 Appointment of a Successor Member.

(a) In the event of a vacancy on the Oversight Board (whether by removal, death, or resignation), a new Member may be appointed to fill such position by the remaining Members acting unanimously; provided, however, that any vacancy resulting from the removal, resignation, or death of a Disinterested Member may only be filled by a disinterested Person unaffiliated with any Claimant or constituency in the Chapter 11 Case; provided, further, that if an individual serving as the representative of a Committee Member resigns from its role as representative, such resignation shall not be deemed resignation of the Committee Member itself and such Committee Member shall have the exclusive right to designate its replacement representative for the Oversight Board. The appointment of a successor Member will be further evidenced by the Claimant Trustee's filing with the Bankruptcy Court (to the extent a final decree has not been entered) and posting on the Claimant Trustee's website a notice of appointment, at the direction of the Oversight Board, which notice will include the name, address, and telephone number of the successor Member.

(b) Immediately upon the appointment of any successor Member, the successor Member shall assume all rights, powers, duties, authority, and privileges of a Member hereunder and such rights and privileges will be vested in and undertaken by the successor Member without any further act. A successor Member will not be liable personally for any act or omission of a predecessor Member.

(c) Every successor Member appointed hereunder shall execute, acknowledge, and deliver to the Claimant Trustee and other Members an instrument accepting the appointment

under this Agreement and agreeing to be bound thereto, and thereupon the successor Member without any further act, deed, or conveyance, shall become vested with all rights, powers, trusts, and duties of a Member hereunder.

4.11 Compensation and Reimbursement of Expenses. Unless determined by the Oversight Board, no Member shall be entitled to compensation in connection with his or her service to the Oversight Board; provided, however, that a Disinterested Member shall be compensated in a manner and amount initially set by the other Members and as thereafter amended from time to time by agreement between the Oversight Board and the Disinterested Member. Notwithstanding the foregoing, the Claimant Trustee will reimburse the Members for all reasonable and documented out-of-pocket expenses incurred by the Members in connection with the performance of their duties hereunder (which shall not include fees, costs, and expenses of legal counsel).

4.12 Confidentiality. Each Member shall, during the period that such Member serves as a Member under this Agreement and following the termination of this Agreement or following such Member's removal or resignation, hold strictly confidential and not use for personal gain any material, non-public information of or pertaining to any Person to which any of the Claimant Trust Assets relates or of which such Member has become aware in the Member's capacity as a Member ("Confidential Trust Information"), except as otherwise required by law. For the avoidance of doubt, a Member's Affiliates, employer, and employer's Affiliates (and collectively with such Persons' directors, officers, partners, principals and employees, "Member Affiliates") shall not be deemed to have received Confidential Trust Information solely due to the fact that a Member has received Confidential Trust Information in his or her capacity as a Member of the Oversight Board and to the extent that (a) a Member does not disclose any Confidential Trust Information to a Member Affiliate, (b) the business activities of such Member Affiliates are conducted without reference to, and without use of, Confidential Trust Information, and (c) no Member Affiliate is otherwise directed to take, or takes on behalf of a Member or Member Affiliate, any actions that are contrary to the terms of this Section 4.12.

ARTICLE V. **TRUST INTERESTS**

5.1 Claimant Trust Interests.

(a) General Unsecured Claim Trust Interests. On the date hereof, or on the date such Claim becomes Allowed under the Plan, the Claimant Trust shall issue General Unsecured Claim Trust Interests to Holders of Allowed Class 8 General Unsecured Claims (the "GUC Beneficiaries"). The Claimant Trustee shall allocate to each Holder of an Allowed Class 8 General Unsecured Claim a General Unsecured Claim Trust Interest equal to the ratio that the amount of each Holder's Allowed Class 8 Claim bears to the total amount of the Allowed Class 8 Claims. The General Unsecured Claim Trust Interests shall be entitled to distributions from the Claimant Trust Assets in accordance with the terms of the Plan and this Agreement.

(b) Subordinated Claim Trust Interests. On the date hereof, or on the date such Claim becomes Allowed under the Plan, the Claimant Trust shall issue Subordinated Claim Trust Interests to Holders of Class 9 Subordinated Claims (the "Subordinated Beneficiaries"). The

Claimant Trustee shall allocate to each Holder of an Allowed Class 9 Subordinated Claim a Subordinated Claim Trust Interest equal to the ratio that the amount of each Holder's Allowed Class 9 Claim bears to the total of amount of the Allowed Class 9. The Subordinated Trust Interests shall be subordinated in right and priority to the General Unsecured Claim Trust Interests. The Subordinated Beneficiaries shall only be entitled to distributions from the Claimant Trust Assets after each GUC Beneficiary has been repaid in full with applicable interest on account of such GUC Beneficiary's Allowed General Unsecured Claim, and all Disputed General Unsecured Claims have been resolved, in accordance with the terms of the Plan and this Agreement.

(c) Contingent Trust Interests. On the date hereof, or on the date such Interest becomes Allowed under the Plan, the Claimant Trust shall issue Contingent Interests to Holders of Allowed Class 10 Class B/C Limited Partnership Interests and Holders of Allowed Class 11 Class A Limited Partnership Interests (collectively, the "Equity Holders"). The Claimant Trustee shall allocate to each Holder of Allowed Class 10 Class B/C Limited Partnership Interests and each Holder of Allowed Class 11 Class A Limited Partnership Interests a Contingent Trust Interest equal to the ratio that the amount of each Holder's Allowed Class 10 or Class 11 Interest bears to the total amount of the Allowed Class 10 or Class 11 Interests, as applicable, under the Plan. Contingent Trust Interests shall not vest, and the Equity Holders shall not have any rights under this Agreement, unless and until the Claimant Trustee files with the Bankruptcy Court a certification that all GUC Beneficiaries have been paid indefeasibly in full, including, to the extent applicable, all accrued and unpaid post-petition interest consistent with the Plan and all Disputed Claims have been resolved (the "GUC Payment Certification"). Equity Holders will only be deemed "Beneficiaries" under this Agreement upon the filing of a GUC Payment Certification with the Bankruptcy Court, at which time the Contingent Trust Interests will vest and be deemed "Equity Trust Interests." The Equity Trust Interests shall be subordinated in right and priority to Subordinated Trust Interests, and distributions on account thereof shall only be made if and when Subordinated Beneficiaries have been repaid in full on account of such Subordinated Beneficiary's Allowed Subordinated Claim, in accordance with the terms of the Plan, the Confirmation Order, and this Agreement. The Equity Trust Interests distributed to Allowed Holders of Class A Limited Partnership Interests shall be subordinated to the Equity Trust Interests distributed to Allowed Holders of Class B/C Limited Partnership Interests.

5.2 Interests Beneficial Only. The ownership of the beneficial interests in the Claimant Trust shall not entitle the Claimant Trust Beneficiaries to any title in or to the Claimant Trust Assets (which title shall be vested in the Claimant Trust) or to any right to call for a partition or division of the Claimant Trust Assets or to require an accounting. No Claimant Trust Beneficiary shall have any governance right or other right to direct Claimant Trust activities.

5.3 Transferability of Trust Interests. No transfer, assignment, pledge, hypothecation, or other disposition of a Trust Interest may be effected until (i) such action is unanimously approved by the Oversight Board, (ii) the Claimant Trustee and Oversight Board have received such legal advice or other information that they, in their sole and absolute discretion, deem necessary to assure that any such disposition shall not cause the Claimant Trust to be subject to entity-level taxation for U.S. federal income tax purposes, and (iii) either (x) the Claimant Trustee and Oversight Board, acting unanimously, have received such legal advice or other information that they, in their sole and absolute discretion, deem necessary or appropriate to assure that any such disposition shall not (a) require the Claimant Trust to comply with the registration and/or

reporting requirements of the Securities Act, the Exchange Act, the TIA, or the Investment Company Act or (b) cause any adverse effect under the Investment Advisers Act, or (y) the Oversight Board, acting unanimously, has determined, in its sole and absolute discretion, to cause the Claimant Trust to become a public reporting company and/or make periodic reports under the Exchange Act (provided that it is not required to register under the Investment Company Act or register its securities under the Securities Act) to enable such disposition to be made. In the event that any such disposition is allowed, the Oversight Board and the Claimant Trustee may add such restrictions upon such disposition and other terms of this Agreement as are deemed necessary or appropriate by the Claimant Trustee, with the advice of counsel, to permit or facilitate such disposition under applicable securities and other laws.

5.4 Registry of Trust Interests.

(a) Registrar. The Claimant Trustee shall appoint a registrar, which may be the Claimant Trustee (the “Registrar”), for the purpose of recording ownership of the Trust Interests as provided herein. The Registrar, if other than the Claimant Trustee, shall be an institution or person acceptable to the Oversight Board. For its services hereunder, the Registrar, unless it is the Claimant Trustee, shall be entitled to receive reasonable compensation from the Claimant Trust as a Claimant Trust Expense.

(b) Trust Register. The Claimant Trustee shall cause to be kept at the office of the Registrar, or at such other place or places as shall be designated by the Registrar from time to time, a registry of the Claimant Trust Beneficiaries and the Equity Holders (the “Trust Register”), which shall be maintained pursuant to such reasonable regulations as the Claimant Trustee and the Registrar may prescribe.

(c) Access to Register by Beneficiaries. The Claimant Trust Beneficiaries and their duly authorized representatives shall have the right, upon reasonable prior written notice to the Claimant Trustee, and in accordance with reasonable regulations prescribed by the Claimant Trustee, to inspect and, at the expense of the Claimant Trust Beneficiary make copies of the Trust Register, in each case for a purpose reasonable and related to such Claimant Trust Beneficiary’s Trust Interest.

5.5 Exemption from Registration. The Parties hereto intend that the rights of the Claimant Trust Beneficiaries arising under this Claimant Trust shall not be “securities” under applicable laws, but none of the Parties represent or warrant that such rights shall not be securities or shall not be entitled to exemption from registration under the applicable securities laws. The Oversight Board, acting unanimously, and Claimant Trustee may amend this Agreement in accordance with Article IX hereof to make such changes as are deemed necessary or appropriate with the advice of counsel, to ensure that the Claimant Trust is not subject to registration and/or reporting requirements of the Securities Act, the Exchange Act, the TIA, or the Investment Company Act. The Trust Interests shall not have consent or voting rights or otherwise confer on the Claimant Trust Beneficiaries any rights similar to the rights of a shareholder of a corporation in respect of any actions taken or to be taken, or decisions made or to be made, by the Oversight Board and/or the Claimant Trustee under this Agreement.

5.6 Absolute Owners. The Claimant Trustee may deem and treat the Claimant Trust Beneficiary of record as determined pursuant to this Article 5 as the absolute owner of such Trust Interests for the purpose of receiving distributions and payment thereon or on account thereof and for all other purposes whatsoever.

5.7 Effect of Death, Incapacity, or Bankruptcy. The death, incapacity, or bankruptcy of any Claimant Trust Beneficiary during the term of the Claimant Trust shall not (i) entitle the representatives or creditors of the deceased Beneficiary to any additional rights under this Agreement, or (ii) otherwise affect the rights and obligations of any of other Claimant Trust Beneficiary under this Agreement.

5.8 Change of Address. Any Claimant Trust Beneficiary may, after the Effective Date, select an alternative distribution address by providing notice to the Claimant Trustee identifying such alternative distribution address. Such notification shall be effective only upon receipt by the Claimant Trustee. Absent actual receipt of such notice by the Claimant Trustee, the Claimant Trustee shall not recognize any such change of distribution address.

5.9 Standing. No Claimant Trust Beneficiary shall have standing to direct the Claimant Trustee to do or not to do any act or to institute any action or proceeding at law or in equity against any party upon or with respect to the Claimant Trust Assets. No Claimant Trust Beneficiary shall have any direct interest in or to any of the Claimant Trust Assets.

5.10 Limitations on Rights of Claimant Trust Beneficiaries.

(a) The Claimant Trust Beneficiaries shall have no rights other than those set forth in this Agreement, the Confirmation Order, or the Plan (including any Plan Supplement documents incorporated therein).

(b) In any action taken by a Claimant Trust Beneficiary against the Claimant Trust, a current or former Trustee, or a current or former Member, in their capacity as such, the prevailing party will be entitled to reimbursement of attorneys' fees and other costs; provided, however, that any fees and costs shall be borne by the Claimant Trust on behalf of any such Trustee or Member, as set forth herein.

(c) A Claimant Trust Beneficiary who brings any action against the Claimant Trust, a current or former Trustee, or a current or former Member, in their capacity as such, may be required by order of the Bankruptcy Court to post a bond ensuring that the full costs of a legal defense can be reimbursed. A request for such bond can be made by the Claimant Trust or by Claimant Trust Beneficiaries constituting in the aggregate at least 50% of the most senior class of Claimant Trust Interests.

(d) Any action brought by a Claimant Trust Beneficiary must be brought in the United States Bankruptcy Court for the Northern District of Texas. Claimant Trust Beneficiaries are deemed to have waived any right to a trial by jury

(e) The rights of Claimant Trust Beneficiaries to bring any action against the Claimant Trust, a current or former Trustee, or current or former Member, in their capacity as such, shall not survive the final distribution by the Claimant Trust.

ARTICLE VI. **DISTRIBUTIONS**

6.1 Distributions.

(a) Notwithstanding anything to the contrary contained herein, the Claimant Trustee shall distribute to holders of Trust Interests at least annually the Cash on hand net of any amounts that (a) are reasonably necessary to maintain the value of the Claimant Trust Assets pending their monetization or other disposition during the term of the Claimant Trust, (b) are necessary to pay or reserve for reasonably incurred or anticipated Claimant Trust Expenses and any other expenses incurred by the Claimant Trust (including, but not limited to, any taxes imposed on or payable by the Claimant Trustee with respect to the Claimant Trust Assets), (c) are necessary to pay or reserve for the anticipated costs and expenses of the Litigation Sub-Trust, (d) are necessary to satisfy or reserve for other liabilities incurred or anticipated by the Claimant Trustee in accordance with the Plan and this Agreement (including, but not limited to, indemnification obligations and similar expenses in such amounts and for such period of time as the Claimant Trustee determines, in good faith, may be necessary and appropriate, which determination shall not be subject to consent of the Oversight Board, may not be modified without the express written consent of the Claimant Trustee, and shall survive termination of the Claimant Trustee), (e) are necessary to maintain the Disputed Claims Reserve, and (f) are necessary to pay Allowed Claims in Class 1 through Class 7. Notwithstanding anything to the contrary contained in this paragraph, the Claimant Trustee shall exercise reasonable efforts to make initial distributions within six months of the Effective Date, and the Oversight Board may not prevent such initial distributions unless upon a unanimous vote of the Oversight Board. The Claimant Trustee may otherwise distribute all Claimant Trust Assets on behalf of the Claimant Trust in accordance with this Agreement and the Plan at such time or times as the Claimant Trustee is directed by the Oversight Board.

(b) At the request of the Reorganized Debtor, subject in all respects to the provisions of this Agreement, the Claimant Trustee shall distribute Cash to the Reorganized Debtor, as Distribution Agent with respect to Claims in Class 1 through 7, sufficient to satisfy Allowed Claims in Class 1 through Class 7.

(c) All proceeds of Claimant Trust Assets shall be distributed in accordance with the Plan and this Agreement.

6.2 Manner of Payment or Distribution. All distributions made by the Claimant Trustee on behalf of the Claimant Trust to the Claimant Trust Beneficiaries shall be payable by the Claimant Trustee directly to the Claimant Trust Beneficiaries of record as of the twentieth (20th) day prior to the date scheduled for the distribution, unless such day is not a Business Day, then such date or the distribution shall be the following Business Day, but such distribution shall be deemed to have been completed as of the required date.

6.3 Delivery of Distributions. All distributions under this Agreement to any Claimant Trust Beneficiary shall be made, as applicable, at the address of such Claimant Trust Beneficiary (a) as set forth on the Schedules filed with the Bankruptcy Court or (b) on the books and records

of the Debtor or their agents, as applicable, unless the Claimant Trustee has been notified in writing of a change of address pursuant to Section 5.6 hereof.

6.4 Disputed Claims Reserves. There will be no distributions under this Agreement or the Plan on account of Disputed Claims pending Allowance. The Claimant Trustee will maintain a Disputed Claims Reserve as set forth in the Plan and will make distributions from the Disputed Claims Reserve as set forth in the Plan.

6.5 Undeliverable Distributions and Unclaimed Property. All undeliverable distributions and unclaimed property shall be treated in the manner set forth in the Plan.

6.6 De Minimis Distributions. Distributions with a value of less than \$100 will be treated in accordance with the Plan.

6.7 United States Claimant Trustee Fees and Reports. **After the Effective Date, the Claimant Trust shall pay as a Claimant Trust Expense, all fees incurred under 28 U.S.C. § 1930(a)(6) by reason of the Claimant Trust's disbursements until the Chapter 11 Case is closed. After the Effective Date, the Claimant Trust shall prepare and serve on the Office of the United States Trustee such quarterly disbursement reports for the Claimant Trust as required by the Office of the United States Trustee Office for as long as the Chapter 11 Case remains open.**

ARTICLE VII. TAX MATTERS

7.1 Tax Treatment and Tax Returns.

(a) It is intended for the initial transfer of the Claimant Trust Assets to the Claimant Trust to be treated as a grantor trust for federal income tax purposes (and foreign, state, and local income tax purposes where applicable) as if the Debtor transferred the Claimant Trust Assets (other than the amounts set aside in the Disputed Claim Reserve, if the Claimant Trustee makes the election described below) to the Claimant Trust Beneficiaries and then, immediately thereafter, the Claimant Trust Beneficiaries transferred the Claimant Trust Assets to the Claimant Trust. Consistent with such treatment, (i) it is intended that the Claimant Trust will be treated as a grantor trust for federal income tax purposes (and foreign, state, and local income tax purposes where applicable), (ii) it is intended that the Claimant Trust Beneficiaries will be treated as the grantors of the Claimant Trust and owners of their respective share of the Claimant Trust Assets for federal income tax purposes (and foreign, state, and local income tax purposes where applicable). The Claimant Trustee shall file all federal income tax returns (and foreign, state, and local income tax returns where applicable) for the Claimant Trust as a grantor trust pursuant to Treasury Regulation Section 1.671-4(a).

(b) The Claimant Trustee shall determine the fair market value of the Claimant Trust Assets as of the Effective Date and notify the applicable Beneficiaries of such valuation, and such valuation shall be used consistently by all parties for all federal income tax purposes.

(c) The Claimant Trustee may file an election pursuant to Treasury Regulation 1.468B-9(c) to treat the Disputed Claims Reserve as a disputed ownership fund, in which case the

Claimant Trustee will file federal income tax returns and pay taxes for the Disputed Claim Reserve as a separate taxable entity.

7.2 Withholding. The Claimant Trustee may withhold from any amount distributed from the Claimant Trust to any Claimant Trust Beneficiary such sum or sums as are required to be withheld under the income tax laws of the United States or of any state or political subdivision thereof. Any amounts withheld pursuant hereto shall be deemed to have been distributed to and received by the applicable Beneficiary. As a condition to receiving any distribution from the Claimant Trust, the Claimant Trustee may require that the Beneficiary provide such holder's taxpayer identification number and such other information and certification as may be deemed necessary for the Claimant Trustee to comply with applicable tax reporting and withholding laws. If a Beneficiary fails to comply with such a request within one year, such distribution shall be deemed an unclaimed distribution and treated in accordance with Section 6.5(b) of this Agreement.

ARTICLE VIII.

STANDARD OF CARE AND INDEMNIFICATION

8.1 Standard of Care. None of the Claimant Trustee, acting in his capacity as the Claimant Trustee or in any other capacity contemplated by this Agreement or the Plan, the Delaware Trustee, acting in its capacity as Delaware Trustee, the Oversight Board, or any current or any individual Member, solely in their capacity as Members of the Oversight Board, shall be personally liable to the Claimant Trust or to any Person (including any Claimant Trust Beneficiary) in connection with the affairs of the Claimant Trust, unless it is ultimately determined by order of the Bankruptcy Court or, if the Bankruptcy Court either declines to exercise jurisdiction over such action, or cannot exercise jurisdiction over such action, such other court of competent jurisdiction that the acts or omissions of any such Claimant Trustee, Delaware Trustee, Oversight Board, or Member constituted fraud, willful misconduct, or gross negligence. The employees, agents and professionals retained by the Claimant Trust, the Claimant Trustee, Delaware Trustee, Oversight Board, or individual Member shall not be personally liable to the Claimant Trust or any other Person in connection with the affairs of the Claimant Trust, unless it is ultimately determined by order of the Bankruptcy Court or, if the Bankruptcy Court either declines to exercise jurisdiction over such action, or cannot exercise jurisdiction over such action, such other court of competent jurisdiction that such acts or omissions by such employee, agent, or professional constituted willful fraud, willful misconduct or gross negligence. None of the Claimant Trustee, Delaware Trustee, Oversight Board, or any Member shall be personally liable to the Claimant Trust or to any Person for the acts or omissions of any employee, agent or professional of the Claimant Trust or Claimant Trustee taken or not taken in good faith reliance on the advice of professionals or, as applicable, with the approval of the Bankruptcy Court, unless it is ultimately determined by order of the Bankruptcy Court or, if the Bankruptcy Court either declines to exercise jurisdiction over such action, or cannot exercise jurisdiction over such action, such other court of competent jurisdiction that the Claimant Trustee, Delaware Trustee, Oversight Board, or Member acted with gross negligence or willful misconduct in the selection, retention, or supervision of such employee, agent or professional of the Claimant Trust.

8.2 Indemnification. The Claimant Trustee (including each former Claimant Trustee), WTNA in its individual capacity and as Delaware Trustee, the Oversight Board, and all past and present Members (collectively, in their capacities as such, the "Indemnified Parties") shall be

indemnified by the Claimant Trust against and held harmless by the Claimant Trust from any losses, claims, damages, liabilities or expenses (including, without limitation, attorneys' fees, disbursements, and related expenses) to which the Indemnified Parties may become subject in connection with any action, suit, proceeding or investigation brought or threatened against any of the Indemnified Parties in their capacity as Claimant Trustee, Delaware Trustee, Oversight Board, or Member, or in connection with any matter arising out of or related to the Plan, this Agreement, or the affairs of the Claimant Trust, unless it is ultimately determined by order of the Bankruptcy Court or other court of competent jurisdiction that the Indemnified Party's acts or omissions constituted willful fraud, willful misconduct, or gross negligence. If the Indemnified Party becomes involved in any action, proceeding, or investigation in connection with any matter arising out of or in connection with the Plan, this Agreement or the affairs of the Claimant Trust for which an indemnification obligation could arise, the Indemnified Party shall promptly notify the Claimant Trustee and/or Oversight Board, as applicable; provided, however, that the failure of an Indemnified Party to promptly notify the Claimant Trustee and/or Oversight Board of an indemnification obligation will not excuse the Claimant Trust from indemnifying the Indemnified Party unless such delay has caused the Claimant Trust material harm. The Claimant Trust shall pay, advance or otherwise reimburse on demand of an Indemnified Party the Indemnified Party's reasonable legal and other defense expenses (including, without limitation, the cost of any investigation and preparation and attorney fees, disbursements, and other expenses related to any claim that has been brought or threatened to be brought) incurred in connection therewith or in connection with enforcing his or her rights under this Section 8.2 as a Claimant Trust Expense, and the Claimant Trust shall not refuse to make any payments to the Indemnified Party on the assertion that the Indemnified Party engaged in willful misconduct or acted in bad faith; provided that the Indemnified Party shall be required to repay promptly to the Claimant Trust the amount of any such advanced or reimbursed expenses paid to the Indemnified Party to the extent that it shall be ultimately determined by Final Order that the Indemnified Party engaged in willful fraud, willful misconduct, or gross negligence in connection with the affairs of the Claimant Trust with respect to which such expenses were paid; provided, further, that any such repayment obligation shall be unsecured and interest free. The Claimant Trust shall indemnify and hold harmless the employees, agents and professionals of the Claimant Trust and Indemnified Parties to the same extent as provided in this Section 8.2 for the Indemnified Parties. For the avoidance of doubt, the provisions of this Section 8.2 shall remain available to any former Claimant Trustee, WTNA in its individual capacity and as Delaware Trustee, or Member or the estate of any decedent Claimant Trustee or Member, solely in their capacities as such. The indemnification provided hereby shall be a Claimant Trust Expense and shall not be deemed exclusive of any other rights to which the Indemnified Party may now or in the future be entitled to under the Plan or any applicable insurance policy. The failure of the Claimant Trust to pay or reimburse an Indemnified Party as required under this Section 8.2 shall constitute irreparable harm to the Indemnified Party and such Indemnified Party shall be entitled to specific performance of the obligations herein. The terms of this Section 8.2 shall survive the termination of this Agreement and the resignation or removal of any Indemnified Party.

8.3 No Personal Liability. Except as otherwise provided herein, neither of the Trustees nor Members of the Oversight Board shall be subject to any personal liability whatsoever, whether in tort, contract, or otherwise, to any Person in connection with the affairs of the Claimant Trust to the fullest extent provided under Section 3803 of the Delaware Statutory Trust Act, and all Persons asserting claims against the Claimant Trustee, Litigation Trustee, or any Members, or

otherwise asserting claims of any nature in connection with the affairs of the Claimant Trust, shall look solely to the Claimant Trust Assets for satisfaction of any such claims.

8.4 Other Protections. To the extent applicable and not otherwise addressed herein, the provisions and protections set forth in Article IX of the Plan will apply to the Claimant Trust, the Claimant Trustee, the Litigation Trustee, and the Members.

ARTICLE IX. **TERMINATION**

9.1 Duration. The Trustees, the Claimant Trust, and the Oversight Board shall be discharged or dissolved, as the case may be, at such time as: (a) the Litigation Trustee determines that the pursuit of Estate Claims is not likely to yield sufficient additional proceeds to justify further pursuit of such Estate Claims, (b) the Claimant Trustee determines that the pursuit of Causes of Action (other than Estate Claims) is not likely to yield sufficient additional proceeds to justify further pursuit of such Causes of Action, (c) the Claimant Trustee determines that the pursuit of sales of other Claimant Trust Assets is not likely to yield sufficient additional proceeds to justify further pursuit of such sales of Claimant Trust Assets, (d) all objections to Disputed Claims and Equity Interests are fully resolved, (e) the Reorganized Debtor is dissolved, and (f) all Distributions required to be made by the Claimant Trustee to the Claimant Trust Beneficiaries under the Plan have been made, but in no event shall the Claimant Trust be dissolved later than three years from the Effective Date unless the Bankruptcy Court, upon motion made within the six-month period before such third anniversary (and, in the event of further extension, by order of the Bankruptcy Court, upon motion made at least six months before the end of the preceding extension), determines that a fixed period extension (not to exceed two years, together with any prior extensions) is necessary to facilitate or complete the recovery on, and liquidation of, the Claimant Trust Assets.

9.2 Distributions in Kind. Upon dissolution of the Claimant Trust, any remaining Claimant Trust Assets that exceed the amounts required to be paid under the Plan will be transferred (in the sole discretion of the Claimant Trustee) in Cash or in-kind to the Holders of the Claimant Trust Interests as provided in the Claimant Trust Agreement.

9.3 Continuance of the Claimant Trustee for Winding Up. After dissolution of the Claimant Trust and for purpose of liquidating and winding up the affairs of the Claimant Trust, the Claimant Trustee shall continue to act as such until the Claimant Trustee's duties have been fully performed. Prior to the final distribution of all remaining Claimant Trust Assets, the Claimant Trustee shall be entitled to reserve from such assets any and all amounts required to provide for the Claimant Trustee's own costs and expenses, including a reserve to fund any potential indemnification or similar obligations of the Claimant Trust, until such time as the winding up of the Claimant Trust is completed. Upon the dissolution of the Claimant Trust and completion of the winding up of the assets, liabilities and affairs of the Claimant Trust pursuant to the Delaware Statutory Trust Act, the Claimant Trustee shall prepare, execute and file a certificate of cancellation with the State of Delaware to terminate the Claimant Trust pursuant to Section 3810 of the Delaware Statutory Trust Act (such date upon which the certificate of cancellation is filed shall be referred to as the "Termination Date"). If the Delaware Trustee's signature is required for purposes of filing such certificate of cancellation, the Claimant Trustee shall provide the Delaware

Trustee with written direction to execute such certificate of cancellation, and the Delaware Trustee shall be entitled to conclusively and exclusively rely upon such written direction without further inquiry. Upon the Termination date, the Claimant Trustee shall retain for a period of two (2) years, as a Claimant Trust Expense, the books, records, Claimant Trust Beneficiary lists, and certificated and other documents and files that have been delivered to or created by the Claimant Trustee. At the Claimant Trustee's discretion, all of such records and documents may, but need not, be destroyed at any time after two (2) years from the Termination Date.

9.4 Termination of Duties. Except as otherwise specifically provided herein, upon the Termination Date of the Claimant Trust, the Claimant Trustee, the Oversight Board and its Members shall have no further duties or obligations hereunder.

9.5 No Survival. The rights of Claimant Trust Beneficiaries hereunder shall not survive the Termination Date, provided that such Claimant Trust Beneficiaries are provided with notice of such Termination Date.

ARTICLE X. **AMENDMENTS AND WAIVER**

The Claimant Trustee, with the consent of a simple majority of the Oversight Board, may amend this Agreement to correct or clarify any non-material provisions. This Agreement may not otherwise be amended, supplemented, otherwise modified, or waived in any respect except by an instrument in writing signed by the Claimant Trustee and with the unanimous approval of the Oversight Board, and the approval of the Bankruptcy Court, after notice and a hearing; provided that the Claimant Trustee must provide the Oversight Board with prior written notice of any non-material amendments, supplements, modifications, or waivers of this Agreement. No amendment or waiver of this Agreement that adversely affects the Delaware Trustee shall be effective unless the Delaware Trustee has consented thereto in writing in its sole and absolute discretion.

ARTICLE XI. **MISCELLANEOUS**

11.1 Trust Irrevocable. Except as set forth in this Agreement, establishment of the Claimant Trust by this Agreement shall be irrevocable and shall not be subject to revocation, cancellation or rescission by the Claimant Trust Beneficiaries.

11.2 Bankruptcy of Claimant Trust Beneficiaries. The dissolution, termination, bankruptcy, insolvency or other similar incapacity of any Claimant Trust Beneficiary shall not permit any creditor, trustee, or any other Claimant Trust Beneficiary to obtain possession of, or exercise legal or equitable remedies with respect to, the Claimant Trust Assets.

11.3 Claimant Trust Beneficiaries have No Legal Title to Claimant Trust Assets. No Claimant Trust Beneficiary shall have legal title to any part of the Claimant Trust Assets.

11.4 Agreement for Benefit of Parties Only. Nothing herein, whether expressed or implied, shall be construed to give any Person other than the Claimant Trustee, Oversight Board, and the Claimant Trust Beneficiaries any legal or equitable right, remedy or claim under or in

respect of this Agreement. The Claimant Trust Assets shall be held for the sole and exclusive benefit of the Claimant Trust Beneficiaries.

11.5 Notices. All notices, directions, instructions, confirmations, consents and requests required or permitted by the terms hereof shall, unless otherwise specifically provided herein, be in writing and shall be sent by first class mail, facsimile, overnight mail or in the case of mailing to a non-United States address, air mail, postage prepaid, addressed to:

(a) If to the Claimant Trustee:

Claimant Trustee
c/o Highland Capital Management, L.P.
100 Crescent Court, Suite 1850
Dallas, Texas 75201

With a copy to:

Pachulski Stang Ziehl & Jones LLP
10100 Santa Monica Blvd, 13th Floor
Los Angeles, CA 90067
Attn: Jeffrey Pomerantz (jpomerantz@pszjlaw.com)
Ira Kharasch (ikharasch@pszjlaw.com)
Gregory Demo (gdemo@pszjlaw.com)

(b) If to the Delaware Trustee:

Wilmington Trust, National Association
1100 North Market Street
Wilmington, DE 19890
Attn: Corporate Trust Administration/David Young
Email: nmarlett@wilmingtontrust.com
Phone: (302) 636-6728
Fax: (302) 636-4145

Notice mailed shall be effective on the date mailed or sent. Any Person may change the address at which it is to receive notices under this Agreement by furnishing written notice pursuant to the provisions of this Section 11.5 to the entity to be charged with knowledge of such change.

11.6 Severability. Any provision hereof which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provisions in another jurisdiction.

11.7 Counterparts. This Agreement may be executed by the parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument.

11.8 Binding Effect, etc. All covenants and agreements contained herein shall be binding upon, and inure to the benefit of, the Claimant Trust, the Claimant Trustee, and the Claimant Trust Beneficiaries, and their respective successors and assigns. Any notice, direction, consent, waiver or other instrument or action by any Claimant Trust Beneficiary shall bind its successors and assigns.

11.9 Headings; References. The headings of the various Sections herein are for convenience of reference only and shall not define or limit any of the terms or provisions hereof.

11.10 Governing Law. This Agreement shall in all respects be governed by, and construed in accordance with the laws of the State of Delaware, including all matters of constructions, validity and performance.

11.11 Consent to Jurisdiction. Each of the parties hereto, each Member (solely in their capacity as Members of the Oversight Board), and each Claimant Trust Beneficiary consents and submits to the exclusive jurisdiction of the Bankruptcy Court for any action or proceeding instituted for the enforcement and construction of any right, remedy, obligation, or liability arising under or by reason of this Agreement, the Plan or any act or omission of the Claimant Trustee (acting in his capacity as the Claimant Trustee or in any other capacity contemplated by this Agreement or the Plan), Litigation Trustee (acting in his capacity as the Litigation Trustee or in any other capacity contemplated by this Agreement or the Plan), the Oversight Board, or any individual Member (solely in their capacity as Members of the Oversight Board); *provided, however,* that if the Bankruptcy Court either declines to exercise jurisdiction over such action or cannot exercise jurisdiction over such action, such action may be brought in the state or federal courts located in the Northern District of Texas.

11.12 Transferee Liabilities. The Claimant Trust shall have no liability for, and the Claimant Trust Assets shall not be subject to, any claim arising by, through or under the Debtor except as expressly set forth in the Plan or in this Agreement. In no event shall the Claimant Trustee or the Claimant Trust Beneficiaries have any personal liability for such claims. If any liability shall be asserted against the Claimant Trust or the Claimant Trustee as the transferee of the Claimant Trust Assets on account of any claimed liability of, through or under the Debtor or Reorganized Debtor, the Claimant Trustee may use such part of the Claimant Trust Assets as may be necessary to contest any such claimed liability and to pay, compromise, settle or discharge same on terms reasonably satisfactory to the Claimant Trustee as a Claimant Trust Expense.

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Wilmington Trust, National Association,
as Delaware Trustee

By: NC Marlett III
Name: Neumann Marlett
Title: Bank Officer

HMIT Exhibit No. 26a

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EXHIBIT S

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